Supreme Court, U.S.
FILED
JUN 22 1999

No. 98-2054

In The

Supreme Court of the United States

TONY JOBE,
Assignee of AIR NEW ORLEANS, INC.,
and PLAINTIFF'S-APPELLANT'S COUNSEL,

Petitioners,

v.

ATR MARKETING, INC., AVIONS DE TRANSPORT REGIONAL (G.I.E.); AEROSPATIALE, S.N.I.; FINMECCANICA S.P.A., Individually and d/b/a ALENIA (a division of Finmeccanica) a/k/a AERITALIA S.P.A. and the Successor in the Interest of Aeritalia; AEROSPATIALE, INC.; and DEFENDANTS A through M,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the lack of procedure on the part of the Fifth Circuit Court of Appeals in granting or denying Motions for Extensions resulted in the denial of due process to Petitioners?

2. Whether the Fifth Circuit's refusal to grant oral argument regarding an appeal concerning the award of sanctions by the District Court, or to explain its reasons for denying a request for oral argument, resulted in a denial of due process to the Petitioners?

3. Whether the Fifth Circuit neglected when it failed, in its Appellate role, to apply the appropriate standard of review and law when affirming the District Judge's imposition of sanctions pursuant to 28 U.S.C. § 1927?

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

1. Tony B. Jobe, Appellant
2. ATR Marketing, Inc., Appellee
3. Aerospatiale, Inc., Appellee
4. Aerospatiale, S.N.I., Appellee
5. Finmeccanica, S.P.A., individually and d/b/a ALENIA (a division of Finmeccanica) a/k/a AERITALIA S.P.A. and the Successor in the Interest of Aeritalia, Appellee
6. Avions de Transport Regionale (G.I.E.), Appellee
7. Wayne E. Ferrell, Jr., Attorney at Law, counsel for Appellant
8. Hubbard & Pierce, PLLC, Attorneys at Law, counsel for Appellant
9. O'Reilly & Collins, Attorneys at Law, counsel for Appellant
10. Orvis A. Shiyou, Jr., Attorney at Law, counsel for Appellant
11. Fleming, Hovenkamp & Grayson, Attorneys at Law, counsel for Appellant

CERTIFICATE OF INTERESTED PERSONS – Continued

12. Erik M. Lowrey, Attorney at Law, counsel for Appellees
13. Hogan & Hartson, Attorneys at Law, counsel for Appellees
14. The Honorable Charles Pickering, District Judge

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Tony Jobe, Assignee of Air New Orleans, Inc., and Plaintiff's-Appellants' counsel, respectfully pray that a Writ of Certiorari be issued to review the Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit, which was affirmed by the denial of the Petitioners' Petition for Rehearing on March 24, 1999.

OPINIONS

The Opinion of the Court of Appeals, while not reported, is reprinted in the Appendix hereto, page A-1, *infra*. The Memorandum Opinion and Order of the United States District Court for the Southern District of Mississippi (C. Pickering, J.), dated August 28, 1996, is not reported, but is reprinted in the Appendix hereto, page B-1, *infra*.

JURISDICTION

Invoking federal jurisdiction pursuant to 28 U.S.C. § 1332, the Petitioners filed suit in the Southern District of Mississippi. After the completion of discovery and briefing, the district court entered an order dismissing the action based upon a lack of *in personam* jurisdiction. That decision was appealed by the Petitioners to the United States District Court of Appeals for the Fifth Circuit who affirmed the district court's judgment on July 11, 1996. On May 24, 1995, Respondents filed their Motion for Sanctions against the Petitioners. The District Court

entered a Memorandum Opinion and Order, without giving the Petitioners a hearing with an opportunity to give evidence and without granting Petitioners an opportunity for oral argument, on August 28, 1996, finding that only Petitioners' counsel had unreasonably and vexatiously multiplied the proceeding. Petitioners filed an appeal with the United States Court of Appeals for the Fifth Circuit who affirmed the District Court's Memorandum Opinion and Order on February 19, 1999. Petitioners then timely filed their Petition for Rehearing which was subsequently denied March 24, 1999. (Appendix, page C-1).

The jurisdiction of this Court to review the judgment of the Fifth Circuit dated February 19, 1999, is invoked under 28 U.S.C. § 1254(1).

RULES INVOLVED

Federal Rule of Appellate Procedure 26, Computating and Extending Time.

The full text of the rule is reprinted in the Appendix, page D-1, *infra.*

Fifth Circuit Local Rule 26.

The Full text of the rule is reprinted in the Appendix, page D-2, *infra.*

Federal Rule of Appellate Procedure 31, Filing and Service of A Brief.

The Full text of the rule is reprinted in the Appendix, page D-4, *infra.*

Fifth Circuit Local Rule 31.

The Full text of the rule is reprinted in the Appendix, page D-4, *infra.*

Federal Rule of Appellate Procedure 34, Oral Argument.

The full text of this rule is reprinted in the Appendix, page E-1, *infra.*

Fifth Circuit Local Rule 34, Oral Argument.

The full text of this rule is reprinted in the Appendix, page E-3, *infra.*

STATEMENT OF THE CASE

Tony Jobe, Assignee of Air New Orleans, Inc., filed his Complaint on January 12, 1994. Representing Petitioner was T. Roe Frazier, II, of the law firm of Langston, Frazier and Sweet. Jobe later employed the firm of O'Reilly & Collins of Menlo Park, California, who associated Wayne E. Ferrell, Jr., of the firm of Ferrell & Hubbard.[1]

Jobe's counsel filed an Amended Complaint on October 7, 1994, alleging that one of the Plaintiff's principal place of business was in Gulfport, Mississippi, and that the United States District Court for the Southern District of Mississippi, Hattiesburg Division, had jurisdiction of this case due to a tort being committed in whole or in part in the State of Mississippi. On September 27, 1994, the district court granted Plaintiff an Order to amend his

[1] Ferrell & Hubbard, Attorneys at Law, dissolved effective June 1, 1995. Wayne E. Ferrell, Jr. is currently a sole practitioner and his former partners have established a separate firm of Hubbard & Pierce, which became Hubbard, Pierce & Baria of Jackson, Mississippi. The firm of Hubbard, Pierce & Baria has now dissolved.

Complaint and pursue limited discovery regarding the issue of personal jurisdiction. The parties engaged in limited discovery which was agreed to by the parties regarding whether Respondents were subject to *in personam* jurisdiction in the State of Mississippi pursuant to the Mississippi Long Arm Statute and in accordance with due process of law. Through discovery, Jobe sought, among other things, evidence to contradict the Declarations Under Penalty of Perjury submitted by representatives of the Defendants in support of their Motion to Dismiss. As a result of the discovery filed, Petitioner discovered several instances where the declarations and discovery responses submitted by at least one of the Respondents were false. Regardless, the District Court granted the Motion to Dismiss for lack of *in personam* jurisdiction. Respectively they then filed their Motion for Sanctions for relief pursuant to 28 U.S.C. § 1927. On August 28, 1996, by and through its Memorandum Opinion and Order, the District Court granted Respondents' Motion for Sanctions pursuant to 28 U.S.C. § 1927 for unreasonably and vexatiously multiplying the proceedings. Petitioners appealed the Memorandum Opinion and Order of the District Court of the United States Court of Appeals for the Fifth Circuit. The Court of Appeals for the Fifth Circuit affirmed, without hearing oral argument, basing its decision upon the rationale that the District Court judge was in a better position to determine the imposition of sanctions. (Appendix, page A-4).

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS A LACK OF PROCEDURES FOR TIMELY RULING ON MOTIONS, SUCH AS A MOTION FOR EXTENSION OF TIME, WHICH EFFECTIVELY DENIED PETITIONERS DUE PROCESS.

Federal Rules of Appellate Procedure 26(b) provides in part:

> (a) **(Enlargement of Time).** The Court for good cause shown may upon motion enlarge the time prescribed by these rules or by its Order for doing any act, or may permit an act to be done after the expiration of such time; but the Court may not enlarge the time for filing of a Notice of Appeal, a Petition for Allowance, or Petition for Permission to Appeal. Nor may the Court enlarge the time prescribed by law for filing a Petition to Enjoin, Set Aside, Suspend, Modify, Enforce, or Otherwise Review, or a Notice of Appeal from, an Order of the Administrative Agency, Board, Commission or Officer of the United States, except as specifically authorized by law.

Fed.R.App.P. 26(b) (See Appendix, page D-1, *infra*). Similarly, Local Rule 26 provides, in part:

> **26.2 Extensions of Time.** The Court's policy requires the timely filing of all papers within the period of time allowed by the rules, without granting extensions of time, except for good cause shown. Failure to process appeals timely will cause the dismissal for want of prosecution, without further notice, under the provision of Fifth Circuit Rule 42. If the right to file a reply

> brief is waived, the parties or counsel should immediately notify the Court to expedite submission of the case to the Court.

Fifth Circuit Loc.R. 26. (Appendix, page D-3).

On July 1, 1998, Petitioners filed their Motion to Suspend Briefing Schedule Or, In the Alternative, Motion for Additional Time to File Appellants' Brief. As the Court had not yet ruled on the motion, and to prevent a violation scheduling deadline, Petitioners filed an incomplete Appellants' Brief on July 6, 1998. On July 8, 1998, Petitioners received, via United States mail, the Fifth Circuit Order granting an extension of time in which to file Appellants' Brief. (Appendix, page F-1). As a result, Petitioners contacted the Clerk of the Court of Appeals for the Fifth Circuit and requested that Appellants' Brief be withdrawn in light of the Court's Order granting an extension. The Clerk refused to withdraw Appellants' Brief, but requested that Petitioners file a motion to withdraw the brief and to substitute the brief. On August 3, 1998, Petitioners' Motion to Withdraw and File Substitution Brief was denied, without reason, and the Clerk of the Fifth Circuit returned the original and all copies of Appellants and Appellants' Counsel's Substitution Brief unfiled. (Appendix, page G-1).

Confusingly, the Fifth Circuit's Order, filed August 3, 1998, left in place the extension of time granted by Order dated July 7, 1998, to submit Appellant and Appellants' Counsel's Brief. (Appendix, page G-1). On August 16, 1998, Petitioners also filed their Motion requesting a ten (10) day extension of time from the date of the Court's ruling in which to file Appellants' Rebuttal Brief which set forth the reasons for the extension therein.

Due to the confusing language of the Court's August 3rd Order, Petitioners also filed their Motion to Clarify Order, Motion for Reconsideration and/or to File Corrected Brief. The Fifth Circuit denied all of Petitioners' Motions except that requesting an extension to file Rebuttal Brief. On September 16, 1998, the Fifth Circuit issued a confusing Order which granted Petitioners an extension up to September 9, 1998, to file Appellants' Rebuttal Brief. (Appendix, page H-2). A copy of the Court's Order was mailed to Petitioners' counsel by the Clerk of the Fifth Circuit on September 16, 1998, approximately seven (7) days after the deadline upon which Petitioners' counsel was to have the Rebuttal Brief filed. Upon receipt of the Court's Order, and despite its confusing language, Appellants' counsel worked diligently and mailed Appellants' Rebuttal Brief to the Court on October 9, 1998. Further, Petitioners filed a Motion to File the Rebuttal Brief out of time. Regardless, the Fifth Circuit denied the Motion, refused to consider the Rebuttal Brief and the Clerk forwarded a Notice to Petitioners' counsel stating that the briefs would be returned, if requested, or recycled. (Appendix, page I-1).

Pursuant to the Fifth Amendment of the Constitution of the United States of America, no person shall be deprived of life, liberty, or property, without due process of law. U.S. CONST. Amend. V. By failing to have in place adequate and timely procedures for the granting or denial of procedural motions, the United States Court of Appeals for the Fifth Circuit denied Petitioners the due process afforded by the Fifth Amendment of the Constitution of the United States of America.

A. Due To The Fifth Circuit's Lack of Procedure, This Court Should Hear This Case And Impose Upon The Justices of That Court A Duty To Devise And Enforce Proper Procedures.

Pursuant to Federal Rule of Appellate Procedure 26, and the accompanying local rule, extensions of time in which to file briefs are granted upon a showing of good cause. Fed. R. App. P. 26(b); Fifth Circuit Loc.R. 26.2 (Appendix, page D-3). While the United States Court of Appeals for the Fifth Circuit advises through Local Rules 26.2 and 31 that extensions are not readily granted, it does grant relief upon a showing of good cause. Fifth Circuit Loc.R. 26.2 and 31 (Appendix, pages D-3 and D-4 through D-8).

The Petitioners were denied the due process afforded to them by the Constitution of the United States of America when the Fifth Circuit refused to consider their Substitution and Rebuttal Briefs. While the Fifth Circuit rigidly adheres to the Federal Rules of Appellate Procedure and its own local rules, its procedures for ruling on procedural motions are arbitrarily contrasting and lackadaisical. The Fifth Circuit denied the Petitioners the due process afforded to them by the Constitution of the United States of America when it failed to timely rule upon their July 1, 1998, Motion to Suspend Briefing Schedule Or, For Time to File Appellants' Brief (which was granted, in part, after Appellants' and Appellants' Counsel's initial Brief was filed); refused to allow Petitioners' to withdraw Appellants' and Appellants' Counsel Brief and file their Substitution Brief; denied Petitioners' Motions to Clarify Order, Reconsideration and to File Corrected Brief; failed to timely rule upon Petitioners' Motion for Extension to File Appellants'

Rebuttal Brief (which was granted seven (7) days after the deadline set therein for Petitioners to file their Rebuttal Brief), and denied Petitioners' Motion to file Rebuttal Brief out of Time. Had the Fifth Circuit ruled on Petitioners' Motions in a timely, fair and clear manner, then Petitioners would have had the benefit of the Court's guidance concerning the briefing deadlines. Rather, the Fifth Circuit fail to grant or deny Petitioners' Motions in a timely manner leaving the Petitioners in a state of limbo regarding the briefing deadlines and also provided Orders which were arbitrarily contradictory and confusing.

Petitioners respectfully submit that such failure on the part of the United States Court of Appeals for the Fifth Circuit is a denial of due process and in violation of the Constitution of the United States of America. In their Substitution and Rebuttal Briefs Petitioners clearly supported their position that the District Judge abused his discretion when he imposed sanctions pursuant to 28 U.S.C. § 1927. However, due to a lack of procedure in the Fifth Circuit, Appellants' and Appellants' Counsel's Substitution and Rebuttal Briefs were not considered when the Fifth Circuit heard the case. Accordingly, this Court should now hear the present case to rectify the Fifth Circuit's past procedural shortcomings regarding the ruling on minor, but nonetheless important, motions. While it is understood that the Fifth Circuit maintains a voluminous docket, unless the importance of timing concerning the granting or denial of procedural motions, such as motions for extensions, is brought to the attention of the Justices of the Fifth Circuit, then those seeking the relief for which that Court was conceived will be encumbered by a legacy of procedural inconsistency.

II. THE PETITIONERS WERE DENIED DUE PROCESS BY THE REFUSAL OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT TO HEAR ORAL ARGUMENT OR PROVIDE ITS REASONS AS TO WHY IT REFUSED TO HEAR ORAL ARGUMENT.

Oral argument plays an important role in appellant advocacy. Federal Rule of Appellate Procedure 34, provides, in part:

> **(a) In General.**
>
> **(2) Standards.** Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agree that oral argument is unnecessary for any of the following reasons:
>
> (A) The appeal is frivolous;
>
> (B) The dispositive issue or issues have been authoritatively decided; or
>
> (C) The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

Fed.R.App.P. 34. The case at bar concerns the imposition of sanctions upon Petitioner and Petitioners' counsel by the United States District Court of the Southern District of Mississippi, Hattiesburg Division, pursuant to 28 U.S.C. § 1927. F.R.A.P. 34(a)(2) (Appendix, page E-1), is acknowledged and mirrored by Fifth Circuit Local Rule 34.2 (Appendix, page E-3). While the Petitioners requested oral argument, their request was never addressed by the Fifth Circuit. Rather, the Fifth Circuit ruled on the appeal without hearing oral argument or

providing a reason as to why oral argument was not allowed.

Should a Court impose sanctions on an attorney pursuant to 28 U.S.C. § 1927, the attorney must be afforded all appropriate protection of due process available under law. *Roadway Express v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 2464, ___ L.Ed.2d ___, ___ (1980); *see also Travelers Insurance Co. v. St. Jude Hospital of Kenner*, 38 F.3d 114, 118 (5th Cir. 1994).

Although the required procedures may vary according to interest at stake in a particular context, *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971), the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Matthew v. Eldridge*, 424 U.S. 319, 333, 98 S.Ct. 893, 902, 407 L.Ed.2d 18 (1976) *(quoting Armstrong v. Manze*, 380 U.S. 545, 562, 85 S.Ct. 1187, 191, 14 L.Ed.2d 62 (1965)). A hearing on a motion for sanctions is proper when it would assist in the course and determination of the merits. *Travelers Insurance*, 38 F.3d at 1418. In the case at bar, the Petitioners received oral argument neither at the trial or appellate court levels. Nor were they provided any reason as to why their repeated requests for oral argument were denied. In light of the penal nature of sanctions pursuant to 28 U.S.C. § 1927, Petitioners respectfully submit that the Fifth Circuit refusal to hear oral argument in this case, or provide a reason as to why their request for oral argument was denied, is contrary to the Federal Rules of Appellate Procedure, case laws and a denial of the due process which is afforded to them by the Constitution of the United States of America. Accordingly, the Petitioners respectfully request that this Court hear this case to rectify the Fifth Circuit's refusal to

entertain an integral part of Appellate procedure or, in the very least, provide reason for its refusal so to do.

III. FIFTH CIRCUIT FAILED TO APPROPRIATELY APPLY THE APPLICABLE STANDARD OF REVIEW RESULTING IN AN INABILITY TO RECONCILE ITS RULING IN THE CASE AT BAR WITH PRECEDENT.

The Fifth Circuit's affirmation of the District Court's imposition of sanctions in the case at bar does not comport with precedent set in Fifth Circuit, and in other federal jurisdictions. Accordingly, the Fifth Circuit's ruling in this case does not comply with law set forth in *Eastmark Apparel, Inc. v. James*, 10 F.3d 1156 (5th Cir. 1994); *Travelers Insurance Co.*, 38 F.3d 1414; *Beatrice Foods Company v. New England Printing and Lithographing Company*, 899 F.2d 1171 (5th Cir. 1990); and *Zuk v. Eastern Pennsylvania Psychiatric Institute of The Medical College of Pennsylvania*, 103 F.3d 294 (3d Cir. 1996).

A. The Standard Of Review.

When considering the imposition of sanctions pursuant to 28 U.S.C. § 1927, the "appellate court applies the abuse of discretion standard. *Eastmark*, 10 F.3d at 1163, *citing Cooter and Gell v. Hartmarx Corp.*, 496 U.S. 384, 405-06, 110 S.Ct. 2447, 2461, 110 L.Ed.2d 359, 381-82 (1990). Specifically, the district court should be reversed when its decision to impose sanctions pursuant to 28 U.S.C. § 1927 is based upon " . . . an erroneous view of the law or ***on a clearly erroneous assessment of the evidence.***" *Id.* (emphasis added). When hearing this case, the Fifth Circuit failed to properly apply the standard of

review. Rather, the Fifth Circuit merely found that the District Judge was in a far better position to rule on the Motion for Sanctions (Appendix, page A-4) and assess the evidence. As a result, the Fifth Circuit, affirming the District Court, failed to perform its error correcting role. If the Fifth Circuit is not going to exercise its duty to review the decisions of the District Court then the Fifth Circuit should be abolished.

B. THE DISTRICT COURT'S DECISION TO IMPOSE SANCTIONS WAS BASED UPON A CLEARLY ERRONEOUS ASSESSMENT OF THE EVIDENCE.

The thrust of Respondents' Motion for Sanctions pursuant to § 1927 was that Petitioners filed suit in Mississippi without any basis for or investigation of the allegations for personal jurisdiction contained in the Complaint. (Appendix, page J-6 through J-7). However, the original Complaint was filed by T. Roe Frazier, not Wayne Ferrell or Terry O'Reilly. As an afterthought, Respondents' Motion alleged that Petitioners engaged in unreasonable and vexatious discovery by filing an overly broad Plaintiff's Particularized Statement of Subject Matter of Discovery on October 6, 1994, issued thirteen (13) Subpoena Duces Tecums to non-parties and filing their Motion to Strike. The District Judge acknowledged that aggressive discovery tactics were verified in this case due to the false declarations under penalty of perjury provided by some of Respondents' representatives. (Appendix, page B-8 through B-9). The merit of aggressive discovery in this case was likewise acknowledged by the

Fifth Circuit. (Appendix, page A-4). Regardless, the District Court, affirmed by the Fifth Circuit, imposed sanctions due to Petitioners' "aggressive discovery tactics."

The District Court's imposition of sanctions is an abuse of discretion because it is based upon a clearly erroneous assessment of the evidence. The Fifth Circuit validated the District Court's error when it failed to properly review the evidence and perform its error correcting function. Accordingly, the Court should hear this case to rectify the Fifth Circuit's failure.

(1) The Fifth Circuit Failed In Its Error Correcting Role When It Affirmed The District Court's Finding That The Petitioners Unreasonably And Vexatiously Multiplied The Proceedings By Submitting Petitioners' Particularized Statement of Subject Matter Discovery.

Plaintiff's Particularized Statement of Subject Matter Discovery was, in fact, filed in agreement made by the parties pursuant to District Court's Order of September 27, 1994.

The District Court's September 27, 1995, Order states:

> That the parties are to agree on the subject matter of discovery needed for the Plaintiff to respond to Defendant's Motion to Dismiss by October 12, 1994, and that if the parties cannot agree to such subject matter, they shall submit simultaneous briefs on the issue to the Court by October 17, 1994;

> That the parties shall conduct any of the limited discovery agreed upon by the parties by December 12, 1994; or within sixty (60) calendar days of the Court Order establishing the permitted discovery if necessary for the Court to enter such an Order in the event that the parties are unable to agree on the permitted discovery.

(See Appendix, page J-9). George Miller, counsel for the Respondents, memorialized this agreement in his letter to Petitioners on October 11, 1994, as follows:

> Pursuant to Judge Pickering's September 27, 1994, Order, I called today to discuss "the subject matter of discovery needed for the Plaintiff to respond to Defendant's Motion to Dismiss." After I had outlined Defendant's proposal, you asked that I reduce our proposal in writing and send it to you with a copy to Terry O'Reilly. This letter is in response to your request. . . .
>
> Because Judge Pickering's Order enjoined the parties to agree on the scope of jurisdictional discovery by October 12 or submit briefs by October 17, I would appreciate hearing from you promptly.

(See Appendix, pages J-10 through J-13). The Petitioners' proposed discovery in accordance with the District Court's Order and the Respondents accepted that offer. Respondents' agreement was further outlined by Mr. Miller's letter to Wayne Ferrell dated November 21, 1994, which states in part:

> Enclosed please find the information which we promised in our agreement on the scope of discovery with respect to personal jurisdiction. Specifically, I am enclosing a response to certain requests for information described in Plaintiff's

> "Particularized Statement of Subject Matter Discovery" for Defendants, Aerospatiale, Inc., ATR Marketing, Inc., Avions de Transport Regional, G.I.E., and Aerospatiale, S.N.I. Pursuant to our agreement, each response contains information by way of answers to Interrogatories responsive to paragraphs 8-10, 12, 14-16, and 22-27 of Plaintiff's "particularized statement."

(See Appendix, pages J-14 through J-15). The agreement on the scope of discovery is also evidenced by Erick Lowery's letter to the District Court dated October 17, 1994, and by letter from Mr. Miller to Wayne Ferrell dated October 14, 1994. (See Appendix, pages J-16 through J-19). In Mr. Miller's letter, he suggests that the parties jointly write a letter to the District Court stating the following:

> I suggest that the joint letter be sent to Judge Pickering on Monday read as follows:
>
> > Dear Judge Pickering:
> >
> > In accordance with Your Honor's Order of September 27, 1994, the parties have reached an agreement on a program of discovery to be conducted with respect to the issues of personal jurisdiction.
> >
> > . . .
> >
> > In view of their agreement, the parties do not plan to file briefs today setting forth their positions on the appropriate scope of discovery. We trust that the Court will let the parties know if the foregoing mode of proceeding is in any way unsatisfactory to the Court.

> The "contested matters" to which reference is made in the proposed joint letter to Judge Pickering are Plaintiff's claim of entitlement to the information described in paragraphs 1 through 6 of Plaintiff's so-called "particularized statement" served by October 4. The "program of discovery to be conducted" refers to the proposal made by Defendants in my letter dated October 11, 1994.
>
> Although I neglected to mention this matter when we spoke on the phone this afternoon (for which I apologize), we would also propose that the parties agree that Defendant shall provide discovery in accordance with the October 11 proposal for a period from 1985 to the present, unless Plaintiff's "particularized statement" calls for information covering a shorter period.

(See Appendix, pages J-16 through J-19). As shown by the information contained in the Appendix, the parties agreed to the scope of discovery. Based upon the agreement of the parties, it is clear that the District Court abused its discretion when it imposed sanctions pursuant to U.S.C. § 1927 upon the Petitioners for unreasonably and vexatiously multiplying the proceedings.

(2) The Fifth Circuit Failed In Its Error Correcting Role When It Affirmed The District Court's Finding That Petitioners Unreasonably And Vexatiously Multiplied The Proceedings By Issuing Thirteen (13) Subpoenas Duces Tecum.

The District Court concluded that Petitioners unreasonably and vexatiously multiplied the proceedings by

issuing Subpoena Duces Tecum to thirteen (13) non-parties on or about January 6, 1990, after receiving an extension of the discovery period (Appendix, pages B-12 through B-13). In so doing, the District Judge stated that Petitioners obtained the extension through misrepresentation. The District Court, however, is clearly mistaken in this regard and the Fifth Circuit failed to recognize the District Court's error.

First, the District Court erroneously found that the request to extend the discovery period was made unilaterally by the Petitioners. (Appendix, pages J-20 through J-22). The Amended Order actually submitted to the District Court was prepared by Respondents' counsel, Mr. Miller, signed by all counsel, and stated that it was "on the joint motion of the parties." (Appendix, pages J-20 through J-22).

Second, the Amended Order states:

> This matter having come on for hearing on the joint motion of the parties to extend the limited jurisdictional discovery and time for responding to Defendant's Motion to Dismiss, and the Court having considered the matter and being fully advised in the premises, finds that the Motion is well taken and should be sustained.

(Appendix, page J-20). The District Court did not limit discovery in any manner and certainly did not limit the extension of discovery to the taking of the depositions of the Respondents' designated depositions. In fact, the Amended Order submitted jointly by the parties and signed by the District Court reads:

> That the Order entered on the 27th day of September, 1994, be amended and the parties shall

> conduct any of the limited discovery agreed upon by the parties by January 20, 1995.

(Appendix, page J-20).

Petitioners received Respondents' responses to the Particularized Statement of Subject Matter Discovery on or about November 21, 1994. Petitioners had reason to believe that at least one of the responses was false. Petitioners then took depositions of Respondents and discovered that the designated representatives (who are supposed to be the persons having the most knowledge about their respective companies) had not conducted any research into their company's contacts with the State of Mississippi. Petitioners then had no choice but to issue Subpoena Duces Tecum to obtain documents showing that at least one of the Defendant's Declarations Under Penalty of Perjury in response to Plaintiff's particularized statements of the subject matter of discovery was false.

The Subpoena Duces Tecum required no extra work on behalf of Respondents, except inasmuch as Respondents elected to file a Protective Order to prevent Petitioner from proving that the Declarations Under Penalty of Perjury and the responses to Particularized Statement of the Subject Matter Discovery were false. Appellant either worked out agreements with the non-parties or submitted Agreed Orders to the District Court withdrawing the Subpoena Duces Tecum,[2] so Respondents were

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[2] The Subpoenas Duces Tecum served on four (4) non-parties, Beech Aerospace, Inc., U.S. Navy in Meridian, Mississippi; U.S. Navy Contracting Office in Pascagoula, Mississippi; and the Keesler Air Force Base in Biloxi, Mississippi were solved by Agreed Orders to withdraw the

not required to take any action, did not have to incur any expenses or any attorney's fees as to these Subpoenas. Further, although the District Court limited the scope of the Subpoena Duces Tecum and ordered that the depositions could take place on a limited basis, the District Court never suggested that the Subpoena Duces Tecum should be quashed in their entirety or that the deposition of the non-parties should not take place. (Appendix, pages J-28 through J-32).

Indeed, the Petitioner proved that the declaration of Aerospatiale was false by issuing the Subpoena Duces Tecum to Vickers, Inc., of Jackson, Mississippi. The documents produced pursuant to the Subpoenas revealed that, contrary to the declarations of Thierry Tuot avering that Aerospatiale S.N.I. had never had a representative visit the State of Mississippi. Aerospatiale, in fact, had three (3) employees visiting and inspecting the Vickers, Inc. plant in Jackson, Mississippi, very near the time Mr. Tuot's declaration was filed. Also, contrary to Aerospatiale's discovery responses wherein Aerospatiale denied ever having conducted business in the State of Mississippi or having entered into a contract with a resident of the State of Mississippi, the issuance of the Subpoena Duces Tecum prompted counsel for Aerospatiale, S.N.I. to "suddenly discover" the existence of a contract between Aerospatiale and Vickers, Inc., which was part of a relationship that existed for a period of over twenty (20) years and had resulted in sales of over $3,700,000.00 in

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Subpoenas which required no involvement by the Appellees. (Appendix, pages J-23 through J-27).

1993 alone.[3] To add insult to injury, Mr. Miller, counsel for Aerospatiale, represented to the District Court at a hearing that he had notified Appellant of this "newly discovered" information within ten to fourteen days after it was brought to his attention. The date of the letter revealing these contacts to Appellant was January 13, 1995. The deposition of Theirry Tuot, taken January 16, 1995, revealed that Mr. Miller was advised of the "mistake" *before* the Christmas holidays. Therefore, at a minimum, more than three weeks expired before Mr. Miller advised Petitioners and/or the District Court of the discrepancy.[4] (Appendix, pages J-3 through J-4).

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[3] It is noteworthy that Respondent, Aerospatiale, S.N.I., did not recognize its "error" as to the extent of its contacts with the State of Mississippi until Petitioner issued the Subpoena Duces Tecum to the thirteen (13) non-parties. Arguably, Respondents', Aerospatiale, N.C.I., unreasonably and vexatiously multiplied the proceedings in this case by filing at least one false declaration under penalty of perjury and false responses to particularized statement of subject matter of discovery.

[4] The following chronology of events should assist the Court in considering the misconduct of Defendants and the basis for some of the actions taken by Petitioners' counsel:

Aug. 1993	Aerospatiale, S.N.I. employees are in Mississippi at Vickers plant
June 1994	Declaration of Thierry Tuot stating Aerospatiale, S.N.I. has had no contacts with MS
Aug.-Sept. 1994	Aerospatiale, S.N.I. employees are in Mississippi at Vickers plant
Nov. 1994	Aerospatiale, S.N.I. submits unsigned Responses to Certain Requests for Information, denying any contacts with Mississippi

Lastly, the District Court erroneously found that, in response to Defendants' Emergency Motion to Enforce Order Governing Discovery on Personal Jurisdiction and to Quash Subpoenas served on thirteen (13) non-parties, Petitioners argued without authority that Respondents' contacts outside the State of Mississippi with Mississippi corporations would be relevant to the issue of personal jurisdiction. The case Petitioner relied upon was *Wilkinson v. Mercantile National Bank of Dallas*, 529 So.2d 616 (Miss. 1988). The *Wilkinson* case holds that, if a company that does business outside the State of Mississippi commits a tort outside the State of Mississippi which causes damage in the State of Mississippi, then the tort occurs partly in Mississippi and the Mississippi Courts have jurisdiction of that company. A reasonable extension of *Wilkinson* is that business activity occurring outside the State of Mississippi that results in payments being made to Mississippi corporations inside the State of Mississippi is at least discoverable information with regard to the issue of minimum contacts and personal jurisdiction.

Dec. 16-21, 1994	George Miller, counsel for Aerospatiale, S.N.I., is advised by Thierry Tuot of that company's relationship with Vickers in Mississippi
Jan. 5, 1995	Petitioners' counsel issues 14 Subpoenas Duces Tecum to non-parties, including Vickers
Jan. 13, 1995	Letter from George Miller to Wayne E. Ferrell, Jr. acknowledging Aerospatiale, S.N.I.'s contacts with Mississippi
Jan. 23, 1995	Aerospatiale, S.N.I. submits its corrected Responses to Certain Requests for Information, outlining its contacts with Mississippi

Accordingly, Petitioners did not at any time misrepresent to the District Court that they had a case which they did not have. Instead, the District Court merely disagreed with Petitioners' interpretation of *Wilkinson*.

(3) The Fifth Circuit Failed In Its Error Correcting Role When It Affirmed The District Court's Finding That Petitioners Unreasonably And Vexatiously Multiplied The Proceedings By Serving Fifty (50) Requests for Production.

The Amended Order prepared by the Respondents and signed by the District Court extended the limited jurisdictional discovery period in this case to January 20, 1995. (Appendix, pages J-20 through J-22). Petitioner served Respondents with fifty (50) requests for production of documents on January 20, 1995. Respondents responded to these requests without filing any objections or seeking any protection from the District Court.

Also, Respondents never filed the required pre-discovery disclosure information and never provided Petitioners with documents as required by the pre-discovery disclosure rules. Instead, Respondents filed a Motion to Dismiss supported by Declarations Under Penalty of Perjury, which Petitioner had good reason to suspect contained false statements. Petitioner had no other way of proving Respondents made false statements to the District Court other than issuing the Subpoenas to non-parties (as previously discussed) and submitting requests for production of documents to Respondents. If Respondents had provided information in the pre-discovery disclosure stage, provided correct information in their

Declarations Under Penalty of Perjury, or provided correct and complete information in the F.R.C.P. 30(b)(6) depositions, the request for production of documents and Subpoenas would have been unnecessary.

As it turns out, at least one of the Respondents was found to be conducting business in the State of Mississippi to the extent of $3.7 million in 1993 alone and had an ongoing business relationship with a Mississippi business for a period of over twenty (20) years. Petitioner had a duty to zealously represent his client and not to stand idly while Respondents made false representations to the District Court in an attempt to avoid the District Court's jurisdiction. Petitioners' actions did not vexatiously and unreasonably multiply the proceedings, and the District Court's ruling on this item is clearly erroneous and should have been found to be contrary to the evidence and reversed by the Fifth Circuit.

(4) The Fifth Circuit Failed In Its Error Correcting Role When It Affirmed The District Court's Finding That Petitioners Unreasonably And Vexatiously Multiplied The Proceedings By Filing A Motion to Strike.

The District Court erroneously concluded that the Petitioner unreasonably and vexatiously multiplied the proceedings by filing a Motion to Strike. (Appendix, page B-14). The District Court, however, abused its discretion when it assessed sanctions regarding the filing of the Motion to Strike without allowing the Petitioners an opportunity to argue the Motion to Strike; considering the Motion to Strike; and ruling on the Motion to Strike. The Fifth Circuit erred when it affirmed the District

Court's findings and imposition of sanctions without considering the District Court's actions.

Petitioners were justified in filing the Motion to Strike because at least one of the Respondents had filed a false declaration under penalty of perjury and false responses to the Plaintiffs' particularized statement of the subject matter of discovery. The District Court had taken no action, *sua sponte*, and appeared content to let the fraudulent conduct go unpunished. Petitioners' Motion to Strike pleaded three alternative methods by which the District Court could have remedied the unacceptable conduct of Respondents, yet the District Court, without considering the merits of the Motion, found the Petitioners' Motion to be factually and legally without basis and chose to sanction Petitioner.

On or about June 27, 1994, Thierry Tuot, general counsel for Aerospatiale, S.N.I., filed a declaration under penalty of perjury as follows:

> I have no personal knowledge of any employees of Aerospatiale visiting the State of Mississippi on behalf of Aerospatiale or of any contacts initiated with the State of Mississippi by Aerospatiale employees on behalf of Aerospatiale at any time in the past. Further, after conducting an investigation, I have discovered no evidence of any visits to or contacts with the State of Mississippi by Aerospatiale personnel on behalf of the company at any time.
>
> In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(Appendix, page J-50). Respondents also provided an unsigned Particularized Statement of Fact which was to be signed by Mr. Tuot which claimed, as did Mr. Tuot's affidavit, that Aerospatiale had never been to Mississippi, and did not have any connection with anyone in Mississippi. Mr. Tuot testified in his deposition that he was an attorney with Aerospatiale, S.N.I.; that he began work with Aerospatiale in 1991; that he had no personal knowledge about any of the events that occurred from 1985 to 1991. Mr. Tuot said that he made an investigation and checked with several individuals with Aerospatiale, but had no knowledge whether those individuals were even with Aerospatiale from the period of time of 1985 to 1991. It was obvious from the deposition of Mr. Tuot that he had no personal knowledge of the business of Aerospatiale for the period of time from 1985 to 1991 and had no knowledge as to whether Aerospatiale did any business in the State of Mississippi from 1985 to 1991. (Appendix, pages J-51 through J-56). It is indeed strange that after Mr. Tuot signed a declaration under penalty of perjury (stating that Aerospatiale had no connection in the State of Mississippi; that Aerospatiale had never been to the State of Mississippi; and that Aerospatiale did not have any contacts with the residents of the State of Mississippi), and immediately after Subpoenas Duces Tecum were issued to non-parties (including Vickers, Inc., which had a facility in Jackson, Mississippi), that *representatives of Aerospatiale suddenly discovered they had been to Mississippi and, in fact, were in Mississippi near the very time Mr. Tuot insisted that he had performed an investigation* and discovered that there were no Aerospatiale employees in the State of Mississippi. A copy of the many responses to the Particularized Statement of Fact (which were not

signed by Mr. Tuot) prove that the initial Declaration Under Penalty of Perjury was false. (Appendix, pages J-57 through J-63).

Respondents filed declarations under penalty of perjury with the District Court in an effort to have the Complaint and the Amended Complaint dismissed. Respondents chose representatives who had little knowledge about their company's business during the relevant time frame. For instance, Thierry Tuot did not work for and had no personal knowledge of the activities conducted by Aerospatiale in the United States from 1985 to 1991. Likewise, Gregory Bradford began working with Aerospatiale, S.N.I. in November of 1990, and remained there until January 1, 1991, when he joined Aerospatiale, Inc. Mr. Bradford, like Mr. Tuot, was not even working for Aerospatiale, S.N.I. or Aerospatiale, Inc., from the period of 1985 to 1990 and had no personal knowledge about any of the business affairs of those companies at the time. Roberto Camiz signed a Declaration Under Penalty of Perjury that he had knowledge of Alenia's, a division of Finneccianica's, contacts with the State of Mississippi. When taking Mr. Camiz's deposition, however, he admitted that he had no personal knowledge about any of the things contained in the declaration that he signed, under penalty of perjury, and his Response and Particularized Statement of Fact was based solely upon his conversation with other lawyers in other departments of Finneccianica. At least one of the Declarations under Penalty of Perjury (that of Thierry Tuot) was false, and the District Court should have sanctioned the Defendant. Rather, the District Court ignored the Petitioners' request; refused to rule on Petitioners' Motion to Strike; and failed to even give Petitioner a hearing on its Motion

to Strike. The District Court, instead, abused its discretion when it chose to sanction Petitioner for filing the Motion to Strike.

Petitioner filed the Motion to Strike, not for any improper purpose or in bad faith, but to preserve the integrity of the judicial system by seeking appropriate disciplinary action against Respondents for intentionally, or at least recklessly, submitting to the District Court false statements on material facts. Accordingly, the facts of this case prove Petitioner did not unreasonably and vexatiously multiply these proceedings. It was an abuse of the District Court's discretion to conclude Petitioners' Motion to Strike "was totally without basis in law or fact and was nothing but a delay in harassment technique perpetrated against [Respondents]" without hearing, considering or ruling on the Motion. (Appendix, page B-14). For these reasons, the District Court's award of sanctions against the Petitioner on this issue is contrary to the weight of the evidence and should have been reversed and set aside by the Fifth Circuit.

C. THE DISTRICT COURT'S ASSESSMENT OF THE EVIDENCE IS CLEARLY ERRONEOUS AND CONTRARY TO PRECEDENT.

Sanctions pursuant to § 1927 should be imposed "only in instances evidencing a 'serious and standard disregard for the orderly process of justice.' " *White v. American Airlines, Inc.*, 915 F.2d 1414, 1427 (10th Cir. 1990) *(quoting Dryling v. Peugeot Motors of America, Inc.*, 768 F.2d 1159, 1165 (10th Cir. 1985) *(quoting Kiefel v. Las Vegas Hacienda, Inc.*, 404 F.2d 1163, 1167 (7th Cir. 1968), *cert. denied*, 395 U.S. 908, 89 S.Ct. 1750, 23 L.Ed.2d 221 (1969).

Further, the guiding objective of § 1927 sanctions is to deter any purposeful and unnecessary delay of the proceedings. *Zuk*, 103 F.3d at 297, *quoting Beatrice Foods*, 899 F.2d at 1177. Specifically, the Court must find a willful bad faith on the part of the party to be sanctioned prior to imposing penalties under § 1927. *Id.*, *quoting Williams v. Giant Eagle Markets, Inc.*, 833 F.2d 1184, 1191 (3d Cir. 1999).

Based upon the evidence presented herein, the District Court's assessment that the Petitioners unreasonably and vexaciously multiplied the proceedings is clearly erroneous and a departure from the standard for the imposition of sanctions pursuant to 28 U.S.C. § 1927. In light of this deviation, and the Fifth Circuit's failure to conduct an assessment of the evidence under the appropriate standard of review in light of the applicable law, Petitioners respectfully request that the Court exercise its discretion to hear this case for the purpose of performing an error correcting function in its role as supervisor of federal litigation.

IV. CONCLUSION

The Fifth Circuit denied Petitioners their right to due process guaranteed by the Constitution of the United States of America by failing to promulgate and utilize proper procedures for the ruling on procedural motions, such as motions for extension, and by failing to afford Petitioners oral argument, when requested, or an explanation of its refusal to hear oral argument. Further, the Fifth Circuit failed to perform its appellate function when it failed to apply the appropriate standard of review and assess the evidence in light of the applicable law when

considering the District Judge's imposition of sanctions pursuant to 28 U.S.C. § 1927. Accordingly, this Court should hear the instant case to correct the Fifth Circuit's procedural shortcomings and failure to perform its appellate role.

Respectfully submitted, this the 22 day of June, 1999.

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APPENDIX A

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 98-60098
Summary Calendar

(Filed Feb. 19, 1999)

TONY B. JOBE, Assignee of
AIR NEW ORLEANS, INC.,

Plaintiff-Appellant,

versus

ATR MARKETING, INC.; AVIONS DE TRANSPORT REGIONAL, (G.I.E.); AEROSPATIALE, S.N.I.; FINMECCANICA S.P.A., Individually and doing business as Alenia (a division of Finmeccanica), also known as Aeritalia S.P.A. and the Successor in the Interest of Aeritalia; AEROSPATIALE, INC.; DEFENDNTS [sic] A-M,

Defendants-Appellee

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 2:94-CV-18-PG

Before WISDOM, DUHÉ, and DeMOSS, Circuit Judges.

PER CURIAM:*

Counsel for named Plaintiff-Appellant Tony Jobe appeal a ruling of the district court ordering counsel to pay $15,000 in attorneys fees to counsel for the defendants. The district court ordered this award as a form of sanctions under 28 U.S.C. § 1927, for unreasonably and vexatiously multiplying the proceedings. We affirm.

Before addressing the merits of the case, we address the issue of jurisdiction. Appellees counsel have failed to identify themselves as the appealing party as required by Fed.R.App.P. 3 (c). If counsel have, in fact, failed to comply with Rule 3, the appeal itself is defective, and this Court does not have jurisdiction to hear it.[1]

The notice of appeal lists Tony B. Jobe as the appellant in both the caption and the body of the document. Nowhere does the document itself explain that it is in fact Jobe's counsel who are appealing the order of sanctions. Jobe's counsel contends that the statement that the appeal is being filed for Jobe "by and through his counsel" is sufficient under the caselaw of this Circuit.[2]

The precedent cited by Jobe may be inapplicable to the case at bar. We decline ATR's invitation to review the

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*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

[1] *New York Life Ins. Co. v. Desohtel*, 142 F.3d 873, 884 (5th Cir. 1998).

[2] *Garcia v. Wash*, 20 F.3d 608, 609-10 (5th Cir. 1994).

jurisdictional question, however, as the appeal itself is plainly without merit.[3]

We review a district court's order of sanctions under § 1927 for an abuse of discretion.[4] In the case at bar counsel for Jobe undertook the following actions for which the district court ordered sanctions: (1) issued a "particularized statement of discovery" which was, in fact, overly broad, unduly burdensome, and requested irrelevant information; (2) issued thirteen subpoenas duces tecum after being granted an extension of discovery for the sole purpose of conducting telephonic depositions; (3) issued fifty requests for production of documents on the last day by which discovery was to be completed; and (4) filed a motion for default judgment and to strike all of defendant's responsive pleadings which the district court found to be without basis in law or fact.

Appellants argue that under the caselaw of this Circuit, sanctions under § 1927 "should be 'sparingly applied' and, only if the entire litigation was unwarranted and should never have been filed or pursued, should the Court utilize § 1927 to shift the financial burden of defending the action."[5] This incomplete recitation of Fifth Circuit precedent is exactly the type of

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[3] *Texas Employers' Ins. Ass'n v. Jackson*, 862 F.2d 491 (5th Cir. 1988).

[4] *Travelers Ins. Co. v. St. Jude Hosp. of Kenner*, 38 F.3d 1414, 1416-17 (5th Cir. 1994).

[5] Appellant's Brief at p. 12, citing *F.D.I.C. v. Calhoun*, 34 F.3d 1291, 1297 (5th Cir. 1994) (internal citations omitted).

misrepresentation of law for which counsel was originally sanctioned. The case to which appellants cite actually stands for the proposition that the *entire* financial burden should be shifted only if the entire litigation was unwarranted. In the case at bar, the district court refused to shift the entire financial burden and instead imposed limited sanctions of $15,000.

Appellants further argue that they were, in essence, forced to undertake unreasonable discovery procedures by false statements made under oath by representatives of the defendants. As the district court noted in its order, this would certainly warrant "aggressive" discovery procedures, but not the vexatious and deceitful discovery practiced by counsel for Jobe.

We conclude by noting that it is the district judge who is in the best possible position to assess fairly the damage caused by this type of litigation technique, and it is for that reason that the abuse of discretion standard is in place. Finding no abuse of discretion, we AFFIRM.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI HATTIESBURG DIVISION

TONY B. JOBE, Assignee of
AIR NEW ORLEANS, INC. PLAINTIFF

VERSUS CIVIL ACTION NO. 2:94-CV-18PS

ATR MARKETING, INC., AEROSPATIALE, AERITALIA, and AVIONS de TRANSPORT REGIONAL (G.I.E.) DEFENDANTS

MEMORANDUM OPINION AND ORDER

(Filed Aug. 28, 1996)

This matter is before the Court on Defendants' Motion for Sanctions against Plaintiffs Counsel pursuant to this Court's inherent power, 28 U.S.C. § 1927, and the Mississippi Litigation Accountability Act. The Court having considered the Motion, the response, the briefs of counsel, the authorities cited, the pleadings and exhibits on file, and having conducted at least two oral argument hearings on various phrases [sic] of this case and numerous telephone conferences, finds as follows, to wit:

The Defendants' basic allegation is that Plaintiffs counsel failed to conduct any investigation or at least a proper investigation into whether or not this Court had jurisdiction over the Defendants. Defendants also assert that Plaintiffs counsel have advanced spurious legal theories and made factual representations without first conducting an investigation into the accuracy of those representations and that they have misrepresented facts to the Court, made reckless allegations of impropriety

against the Defendants and their counsel and engaged in unreasonable and vexatious discovery and violated Court orders. The Defendants assert that they are entitled to an award of sanctions against Plaintiffs counsel in an amount equal to the attorney fees and expenses reasonably incurred by the Defendants in this action.

This matter was originally filed in this Court on January 12, 1994. On June 29, 1994, all Defendants filed a Motion to Dismiss for lack of personal jurisdiction. The Plaintiff responded by requesting to hold the Motion to Dismiss in abeyance pending completion of discovery. On July 21, 1994, the Magistrate Judge denied the Motion to hold in abeyance and stayed all discovery pending this Court's ruling on Defendants' Motion to Dismiss. On September 20, 1994, the Plaintiff moved to amend the complaint and to be allowed certain discovery on the jurisdictional issue. On September 27, 1994, after a telephonic hearing, this Court entered an Order allowing the Plaintiff to amend the complaint and to conduct limited discovery as set forth in the Order. The limited discovery period was to terminate on December 12, 1994. By agreement of the parties, the deadline for conducting discovery was extended to January 20, 1995.

On January 6, 1995, after the Court had entered a January 4, 1995, Order allowing the extension of discovery, the Plaintiff caused to be issued subpoenas duces tecum to thirteen non parties. On January 11, 1995, the Defendants moved to enforce the Court's prior Order governing discovery and to quash the Plaintiffs subpoenas served upon the thirteen non parties. After conducting various hearings and telephone conferences on the subject, the Court on January 24, 1995, entered an

Order on Defendant's emergency motion to enforce the Order governing discovery and ordered the Plaintiff to comply with the Court's previous Order limiting discovery to jurisdictional issues. Thereafter, on January 27, 1995, the Plaintiff filed its amended response to the Defendants' motion to dismiss. On February 3, 1995, the Defendants filed their rebuttal to that response to which the Plaintiff, on February 7, 1995, moved the Court to strike the responsive pleadings filed by the Defendants and for entry of default judgment. On May 3, 1995, the Court conducted oral arguments on the Defendants' motion to dismiss and granted that motion based on lack of personal jurisdiction over all Defendants. That ruling was memorialized in an Order entered on May 10, 1995. On May 24, 1995, the Defendants filed the present motion pending before the Court for sanctions against the Plaintiffs counsel.

This case has been long and overly contentious litigation. The Plaintiff was the owner of a commuter airline operating out of New Orleans. He apparently had entered into preliminary negotiations to purchase certain aircraft from the Defendants for use in that airline business. The Plaintiff had also entered into something similar to a joint venture agreement with Continental Airlines whereby Continental would handle certain administrative, scheduling and baggage handling functions for the Plaintiffs company, Air New Orleans. To facilitate the consummation of this joint venture agreement, the Plaintiff apparently turned over certain confidential financial documents and strategic plans to Continental Airlines. In separate litigation, the Plaintiff has alleged that Continental Airlines misused that information and improperly

provided it to these Defendants to the detriment of Plaintiff and Air New Orleans. At any rate, the allegation of the complaint before the Court is that these Defendants, through fraud or otherwise, refused to sell six commuter airplanes to the Plaintiff because of some covert connection with Continental Airlines who had misappropriated Air New Orleans' strategic plan for its own benefit. The Plaintiff has asserted to the Court that he filed suit against Continental Airlines in Texas and procured a rather substantial settlement. However, Continental Airlines was placed in bankruptcy and the Plaintiff has admitted candidly that the value of his settlement against Continental Airlines was greatly reduced. Apparently either during that litigation or shortly thereafter, the Plaintiff filed the present action against these Defendants because of the alleged fraudulent connection between these Defendants and Continental Airlines which resulted in the Defendants' refusing to consummate the sale of the six commuter airplanes to the Plaintiff. As a result, the Plaintiff alleges that his company went into bankruptcy and was ultimately shut down.

The basis of Defendants' motion to dismiss was that this Court lacked personal jurisdiction over any of the defendants. The Plaintiff hotly contested this all the way up through the oral argument hearing on the motion to dismiss and has appealed this Court's dismissal of his action. The Fifth Circuit has now affirmed that decision. To say that the Plaintiff was tenacious in trying to establish personal jurisdiction would be a gross understatement. Every time the Defendants asserted a defense against personal jurisdiction, the Plaintiff provided a new, and usually novel, basis for the Court to assert

personal jurisdiction. Ultimately the Court ruled against the Plaintiff and in favor of the Defendants finding that it had no personal jurisdiction over any of the Defendants.

After the conclusion of the hearing on the motion to dismiss, the Defendants filed the present motion asserting that they are entitled to attorneys' fees and costs expended by them in defending this claim for the grounds asserted above. The Defendants have moved the Court to exercise its inherent powers to award them their full attorneys' fees and costs or in the alternative to proceed under 28 U.S.C. § 1927 or the Mississippi Litigation Accountability Act. The Defendants asserted in their original motion that they were not moving for sanctions under Rule 11. However, in reply to the Plaintiffs response and in supplemental replies the Defendants now assert that if the Court chooses to enter sanctions pursuant to Rule 11 it is within the Court's discretion.

What concerns the Court most about the conduct of counsel for Plaintiff is that counsel argued so forcefully and with such seeming sincerity about matters as to which he had no basis in some instances in the law and in other instances in the facts for the position that he was taking. In retrospect, this Court is well aware that the original order of the Magistrate Judge denying Plaintiff the opportunity to do discovery or to amend his pleadings was correct and should have been followed by this Court. However, this Court out of an abundance of precaution and because of the persistence and apparent sincerity of counsel for Plaintiff did not want to foreclose Plaintiff if he had a legitimate cause of action. However, because of the aggressive but misplaced argument of counsel for Plaintiff, the Court did permit the discovery

to go forward and even after that point counsel continued to be less than candid with the Court and with counsel opposite and persisted in maintaining positions that were and are untenable. Specifically the Court is concerned that counsel for the Plaintiff failed to acknowledge that residence was a prerequisite under clearly established Mississippi case law for obtaining jurisdiction under the doing business prong of the long arm statute. It is also obvious that counsel for Plaintiff filed documents before this Court under oath that Plaintiffs Principal place of business was in Mississippi at the same time Plaintiff was maintaining in other jurisdictions that it's [sic] principal place of business was in Louisiana. The two positions are contradictory. The obvious futility of Plaintiff's position in this regard is borne out by the fact that Plaintiff entirely abandoned this argument before the Fifth Circuit Court of Appeals.

The Court is likewise concerned that counsel for Plaintiff represented to the Court and counsel for the Defendant that there was an extension of discovery needed for the purpose of taking telephonic 30(b)(6) depositions. Immediately after the Court entered the Order making the extension so that counsel could conduct these telephonic depositions, counsel served subpoenas upon thirteen non parties. Attorneys representing clients before this Court are officers of the Court. Counsel should have advised the Court of all of the reasons counsel desired an extension, then the Court could have made an informed decision to allow the extension or not to allow the extension. As it was, the Court only knew part of the reason that counsel for the Plaintiff was asking for an extension. This Court has a right to expect counsel to

be candid and forthcoming. Counsel at no time represented to this Court that counsel had in mind such extensive discovery when counsel prevailed upon the Court to extend the discovery deadline.

Counsel likewise misrepresented to the Court that counsel had a case holding that contracts fulfilled outside of the State of Mississippi would have a bearing on whether a Defendant was doing business in this State if such contracts were with corporations domiciled in the State of Mississippi. Although counsel expressly and specifically represented this to the Court in a telephone conference, when the Court called upon counsel to provide the case that counsel had told the Court he had, he was unable to furnish such a case. The Court did not think that the argument counsel for Plaintiff was making was in accordance with controlling case law, and for that reason asked counsel for the Plaintiff if he had authority for his argument. The colloguy went something like this:

> "Do you have a Mississippi case that holds this?"
>
> Response: "Yes."
>
> "Well, I want to see it, send me a copy of it."
>
> Response: "I will do that."

This case would have been terminated long ago had it not been for the persistence of counsel for the Plaintiff in stating to the Court facts that were not supported either by the law in some instances or by the facts in other instances.

The conclusion that the Court reaches in this matter is tempered somewhat by the fact that counsel for the

Plaintiff has represented that his aggressiveness is due in part to his being aware of a case in another jurisdiction in which the defendant had not been forthcoming. Counsel for the Defendant is right that whether Defendant was or was not forthcoming in a matter being litigated in another forum is not material to any issue before this Court. It does, however, give some explanation as to the aggressiveness of counsel for Plaintiff in trying to elicit information from the Defendants. However, in the opinion of this Court, counsel for the Plaintiff went beyond the bounds of propriety in conducting discovery and arguing to the Court as will be more fully set out later.

This Court also is aware and the final judgment in this case will be tempered by the fact that Defendant or at least one of the Defendants made misrepresentations to the Court. The Court does not find that these misrepresentations were willful but nevertheless they were misstatements. First, the Defendant Aerospatiale, SNI, provided an affidavit or declaration that it had never had representatives in the State of Mississippi when in fact this was not true. Additionally, the same Defendant denied that it had any contracts or had done any business in Mississippi when it turned out that this company had done business with Vickers of Jackson for a considerable period of time and in 1993 alone had sales of over 3.7 million dollars. Whether this information was deliberate or not, it does give Plaintiff's counsel a reason to be aggressive in trying to determine the truthfulness of the information provided by the Defendants. However, as previously indicated, the Court is of the opinion that even taking that into consideration that there were

instances in which counsel for Plaintiff took positions that were unreasonable and vexatious.

Counsel on a number of times was requested to agree to things that obviously should have been agreed to and he refused and declined to do so. It appears that counsel for the Plaintiff would not even have agreed to the time of the day if both his watch and that of the Defendant were synchronized. That kind of failure to cooperate while not alone providing a basis for awarding attorneys fees taken together with the total conduct of counsel for Plaintiff does provide the basis for the award of attorney fees which will be set out more fully in the balance of this opinion. This Court has concluded under the totality of the situation that the Court should not use its inherent power to sanction Plaintiff. However, the totality of the circumstances has been taken into account as the Court rules on specific instances of unreasonable and vexatious conduct.

An attorney has a duty of one hundred percent loyalty to his client. Neither his self interest nor the interest of any person can come ahead of an attorney's obligation to his client. An attorney has a responsibility to vigorously represent his client, but the duty of representation never imposes upon an attorney a responsibility to be discourteous, uncooperative, to conceal facts, to misrepresent, to harrass, or to be unreasonable or vexatious.

The Court is aware of the power it possesses to enter appropriate sanctions under its inherent powers pursuant to the Supreme Court's dictates in *Chambers v. Nasco*, 501 U.S. 32, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). However, the Court is also well aware of the criticisms of using its

inherent power in the face of specific statutory or Rule authority allowing the Court to appropriately sanction undesirable conduct. For the reasons stated hereinafter, the Court is of the opinion that the appropriate way to sanction the complained of conduct in this case is not under its inherent power but instead under 28 U.S.C. § 1927. Neither will the Court address sanctions under Rule 11 since the Court is of the opinion that the matter is appropriately resolved under § 1927.

28 U.S.C. § 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses and attorney fees reasonably incurred because of such conduct.

This section does not allow an imposition of costs, expenses or attorney fees against parties but only against their attorney or attorney-parties. The Plaintiff in this case is an attorney. *See, Breazeale v. Smith*, 857 F.2d 258 (5th Cir. 1988). As the Fifth Circuit has pointed out, § 1927 only creates liability "for *excess* costs, expenses and attorney fees reasonably incurred because of the attorney's unreasonable and vexatious multiplication of the proceedings." *Browning v. Kramer*, 931 F.2d 340, 344 (5th Cir. 1991). "Under § 1927, only those fees and costs associated with 'the persistent prosecution of a meritless claim' may be awarded." *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866, 875 (5th Cir. 1988) (en banc). "Except when the entire course of proceedings were

unwarranted and should neither have been commenced nor persisted in, an award under § 1927 may not shift the entire financial burden of an action's defense." *Browning v. Kramer,* 931 F.2d at 345. In order to award sanctions under § 1927 the Court must find that the attorney's conduct in multiplying the proceedings was both unreasonable and vexatious. *See, Federal Deposit Insurance Corp. v. Connor,* 20 F.3d 1376 (5th Cir. 1994).

Based upon the Court's determination that neither Plaintiff nor Plaintiff's counsel is subject to sanction under Rule 11 or the inherent powers of this Court, the Court is bound by the dictates of § 1927 and the cases interpreting that section to specifically delineate the proceedings which, in the opinion of the court, Plaintiff's counsel commenced or persisted in which unreasonably and vexatiously multiplied the proceedings before the Court.

The Defendants in their motion, have delineated what they consider to be eight specific instances of conduct by plaintiff's counsel which unreasonably and vexatiously multiplied the proceedings. The Court has carefully reviewed those eight specific instances and the Plaintiff's response thereto and has recalled its involvement in this case from its inception and the untoward amount of time it spent on resolving the various questions relating to jurisdictional issues presented to reach its conclusion in this case and to reach the conclusions contained hereinafter in support of this decision.

The Court therefore finds that Plaintiff's counsel has unreasonably and vexatiously multiplied the proceedings

in this case before the Court in the following specific instances:

1. The Court is of the opinion that the Plaintiff's particularized statement of subject matter discovery filed on October 6, 1994, pursuant to this Court's September 27, 1994, order of the Court unreasonably and vexatiously multiplied the proceedings. The Court finds that the Plaintiff's requests, contained in what was supposed to be a "particularized statement", were overly broad and unduly burdensome. The statement requested information that was totally irrelevant in time and place to the limited discovery permitted by this Court. The Court is also of the opinion that Plaintiff's counsel, in response to requests from Defendants to clarify the discovery requests, were tardy, discourteous and unprofessional. The Court is therefore of the opinion that the Defendants are entitled to an appropriate award of attorney's fees and costs regarding this item.

2. The second item which the Court views as having unreasonably and vexatiously multiplied the proceedings in this case was Plaintiff's counsel's issuance of subpoenas duces tecum to thirteen non party witnesses on January 6, 1996, after having received an uncontested extension of the discovery period. The Defendants made a reasonable offer to compromise the objection to the subpoenas if the subpoena recipients were only required to provide information on contacts with Defendants within the State of Mississippi. Plaintiff refused this compromise and forced the Defendants to bring the matter to the Court for resolution. The court conducted a telephone conference on the Defendants' emergency motion to enforce the order governing discovery in which Plaintiff's

counsel represented to the Court that he had a Mississippi Supreme Court case supporting his position. After having been directed by the Court to fax a copy of that case to the Court and to counsel opposite, Plaintiff's counsel instead faxed a number of cases which were not as represented by counsel. Plaintiff's counsel then filed a response to the Defendants' emergency motion in which he argued, without authority, that the Defendants' contacts outside Mississippi with Mississippi corporations would be relevant to sustain the court's jurisdiction over the Defendants.

This Court ultimately granted the Defendants' emergency motion in part by limiting the Plaintiff's discovery from the thirteen non party witnesses to information related to their contacts with the Defendants in Mississippi. The Defendants offer to compromise this situation previously was in line with what the Court ultimately ordered. The Court is therefore of the opinion that the Plaintiff's counsels' actions were unreasonable and vexatious in multiplying the proceedings in regard to this item and finds that the Defendants are entitled to an award of fees and costs incurred in connection with the Emergency Motion to Enforce This Court's Previous Order of September 27, 1994.

3. The next item which the Court considers that the Plaintiff's counsel unreasonably and vexatiously multiplied the proceedings in this matter was when the Plaintiff's counsel served fifty requests for production of documents on the Defendants on January 20, 1995, which was the last day by which discovery was to be completed. The Defendants assert that out of an abundance of caution they responded to the discovery requests even

though they were not required to. The Court is therefore of the opinion that the Plaintiff's counsel's conduct in serving the late discovery vexatiously and unreasonably multiplied the proceedings. However, the Court is further of the opinion that defense counsel's choice to respond to that discovery may have increased the costs beyond what was reasonable. Therefore, even though the Court is of the opinion that the Defendants are entitled to recover certain expenses and costs for responding to the Plaintiff's late discovery, the Court will make a final determination upon that after it receives the Defendants' itemized statements of time and affidavits in support thereof.

4. The next item which the Court feels that the Plaintiff's counsel unreasonably and vexatiously multiplied the proceedings in this cause deals with the Plaintiff's counsel's motion to strike the responsive pleadings filed by the Defendants and motion for entry of default judgment filed on February 7, 1995. The Court is of the opinion that the Plaintiff's motion was totally without basis of law or fact and was nothing but a delay and harassment technique perpetrated against the Defendants. The Court is therefore of the opinion that the Defendants are entitled to recover their expenses and costs for responding to that motion.

The Court, having concluded that the Defendants are entitled, as sanctions for Plaintiff's counsel's vexatious and unreasonable conduct in this litigation in the specifics provided above, to a reasonable amount of attorney's fees and other expenses incurred by the Defendants in defending against these specific acts of misconduct, hereby orders that the Defendants' and the Plaintiff's

counsel shall attempt to agree upon the amount of the above fees and expenses. However, prior to trying to agree counsel shall initiate a telephone conference with the Court which is to be held no later than ten (10) days from the date of this Order. Mr. Ferrell has the responsibility of scheduling this telephone conference with the Court and with counsel opposite. If within fifteen (15) days of this conference, the parties are unable to reach an agreement, the Defendants shall file and serve an itemized statement of such fees and expenses along with supporting affidavits regarding reasonable hourly rates. The Court would advise the parties that it is aware that Defendants' counsel has asserted entitlement to an hourly fee of $300 to $310 per hour and that the Court will be very hesitant to find such an hourly rate reasonable for the type of jurisdictional discovery and motions filed in this action. The Court has advised counsel of this so that they may all be prepared to respond accordingly.

The Court is further aware that both parties have requested oral argument on this motion. However, "the right to a hearing . . . is limited to cases where a hearing would assist the court in its decision." *Travelers Insurance Co. v. St. Jude Hospital of Kenner,* 38 F.3d 1414, 1418 (5th Cir. 1994). The Court is of the opinion that oral argument or a hearing on the motion pending before the Court would not assist in its resolution beyond the pleadings and papers on file. The Court has already permitted the parties to conduct conferences and arguments that under the facts and law of this case were not justified.

Based on the Court's awareness of the issues, and the briefs already filed, the Court does not find that oral argument would be helpful.

SO ORDERED AND ADJUDGED this the 28th day of August, 1996.

/s/ Charles W. Pickering, Sr.
CHARLES W. PICKERING, SR.
UNITED DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60098

TONY B JOBE, Assignee of Air New Orleans Inc

Plaintiff – Appellant

v.

ATR MARKETING, INC; AVIONS DE TRANSPORT REGIONAL, (G.I.E.); AEROSPATIALE, S.N.I.; FINMECCANICA S.P.A., Individually and doing business as Alenia (a division of Finmeccanica), also known as Aeritalia S.P.A. and the Successor in the Interest of Aeritalia; AEROSPATIALE, INC.; DEFENDANTS A-M

Defendants – Appellees

Appeal from the United States District Court for the Southern District of Mississippi, Hattiesburg

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ON PETITION FOR REHEARING

(Filed Mar. 24, 1999)

Before WISDOM, DUHÉ and DeMOSS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above case is denied

ENTERED FOR THE COURT:

/s/ John Minor Wisdom
United States Circuit Judge

APPENDIX D

FRAP 26. COMPUTATION AND EXTENSION OF TIME

(a) *Computation of Time.* In computing any period of time prescribed or allowed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States. It shall also include a day appointed as a holiday by the state wherein the district court which rendered the judgment or order which is or may be appealed from is situated, or by the state wherein the principal office of the clerk of the court of appeals in which the appeal is pending is located.

(b) *Enlargement of Time.* The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may

permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission or officer of the United States, except as specifically authorized by law.

(c) ***Additional Time after Service.*** When a party is required or permitted to act within a prescribed period after service of a paper upon that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service.

FIFTH CIRCUIT RULE 26

26.1 ***Computing Time.*** *Except for briefs and appendices, all other papers, including petitions for rehearing, shall not be timely unless they are actually received by the clerk within the time fixed for filing. Briefs and appendices shall be deemed filed on the day dispatched to the clerk by a third-party commercial carrier for delivery within 3 calendar days, or on the day of mailing if the most expeditious form of delivery by mail is used. The additional 3 days after service by mail, or after delivery to a commercial carrier for delivery within 3 calendar days as referred to in Fed. R. App. P. 26(c), applies only to matters served by a party and not to filings with the clerk of such matters as petitions for rehearing under Fed.R.App. P. 40, suggestions for rehearing en banc under Fed. R. App. P. 35, and bills of costs under Fed. R. App. P. 39.*

*26.2 **Extensions of Time.** The court's policy requires the timely filing of all papers within the period of time allowed by the rules, without granting extensions of time, except for good cause shown. Failure to process appeals timely will cause their dismissal for want of prosecution, without further notice, under the provisions of 5th Cir. R. 42. If the right to file a reply brief is waived, parties or counsel should immediately notify the clerk to expedite submission of the case to the court.*

FRAP 31. FILING AND SERVICE OF A BRIEF

(a) ***Time for Serving and Filing Briefs.*** The appellant shall serve and file a brief within 40 days after the date on which the record is filed. The appellee shall serve and file a brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument. If a court of appeals is prepared to consider cases on the merits promptly after briefs are filed, and its practice is to do so, it may shorten the periods prescribed above for serving and filing briefs, either by rule for all cases or for classes of cases, or by order for specific cases.

(b) ***Number of Copies to Be Filed and Served.*** Twenty-five copies of each brief must be filed with the clerk, and two copies must be served on counsel for each party separately represented unless the court requires the filing or service of a different number by local rule or by order in a particular case. If a party is allowed to file type-written ribbon and carbon copies of the brief, the original and three legible copies must be filed with the clerk, and

one copy must be served on counsel for each party separately represented.

(c) ***Consequence of Failure to File Briefs.*** If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file a brief, the appellee will not be heard at oral argument except by permission of the court.

FIFTH CIRCUIT RULE 31

31.1 Briefs – Number of Copies. *Only 7 copies of briefs shall be filed in all cases.*

31.2 Briefs – Time for Filing Briefs of Intervenors or Amicus Curiae. *In order to provide for maximum utilization of the options permitted by Fed. R. App. P. 28(i), the time for filing the brief of the intervenor or amicus is extended until 15 days after the filing of the principal brief of the party supported by the intervenor or amicus. For purposes of Fed. R. App. P. 31 (a), the time for filing the next brief shall run from that date.*

31.3 Briefs – Time for Mailing or Delivery to a Commercial Carrier. *Appellant's brief must be sent to the clerk not later than 40 days after the date of the briefing notice. Pursuant to Fed. R. App. P. 26(c), appellee has 33 days from the date of the certificate of service to place the brief in the mail or to give it to a third-party commercial carrier for delivery within 3 calendar days. This rule may not be combined with the additional time provisions of Fed. R. App. P. 26(c) to give the appellee 36 days to file a brief. The certificate of service required by Fed R. App. P. 25(d) must be shown at the conclusion of the brief and must be dated. See 5th Cir. R. 39.2*

for limitations on recovery of certain mailing and commercial delivery costs.

31.4 *Briefs – Time for Filing Briefs of Parties.*

31.4.1 General Provisions. The court expects briefs to be filed timely and without extensions in the vast majority of cases. No extensions are automatic, even where the request is unopposed. Any requests for extensions – including initial extensions and extensions that can be granted by the clerk – should be made sparingly. No extension can be granted without good cause shown as required by Fed. R. App. P.26(b), or without meeting the additional requirements contained in the 5th Cir. Rules.

(a) A request for extension should be made as soon as it is reasonably possible to foresee the need for the extension. The request shall be received by the clerk at least 7days before the due date (including Saturdays, Sundays, and holidays as provided in Fed. R. App. P. 26(a)), unless the movant demonstrates, in detail, that the facts that form the basis of the motion either did not exist earlier or were not, or with due diligence could not have been, known earlier.

(b) Before requesting an extension, the movant must contact all other parties to determine whether the request is opposed. Movants should request only as much time as is absolutely needed. The pendency of a motion for extension does not toll the time for compliance.

31.4.2 Grounds for Extensions. As justification for extensions, generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient. Grounds that may merit consideration for extensions are, without limitation, the following, which must be set forth if claimed as a

reason in any motion for a Level 2 or Level 3 extension (as defined in 5th Cir. R. 31.4.3):

(a) Engagement of counsel in other litigation, provided such litigation is identified by caption, number, and court, and there is set forth:

(1) A description of any effort taken to defer the other litigation and of any ruling thereon;

(2) An explanation of why other litigation should receive priority over the case at hand; and,

(3) Other relevant circumstances, including why other associated counsel cannot prepare the brief or relieve the movant's counsel of the other litigation.

(b) The matter is so complex that an adequate brief cannot reasonably be prepared when due.

(c) Extreme hardship will result unless an extension is granted, in which event the nature of the hardship must be set forth in detail.

31.4.3 Levels of Extensions. There are three levels of extensions: a Level 1 extension of 1-30 days from the original due date; a Level 2 extension of 31-60 days from the original due date; and a Level 3 extension of more than 60 days from the original due date.

31.4.3.1 Level 1 Extensions. The clerk is authorized to grant, deny, or take other appropriate action for the court on unopposed Level 1 extensions. The court prefers that the request be made by telephone, but it may be by written motion or letter. When making the request, the movant must explain what good cause exists for the extension. If the extension is granted by telephone, the movant shall immediately send a confirming

letter to the clerk, with copies to all parties. Instead of acting on the request, the clerk may refer it to the court.

If the request is opposed, it shall be made only by written motion setting forth why there is good cause. The motion shall state the initial due date, whether any other extension has been granted, the length of the requested extension, and which parties have expressed opposition. Opposed extensions may be acted upon only by the court.

31.4.3.2 Level 2 Extensions. The clerk is authorized to grant, deny, or take other appropriate action for the court on unopposed Level 2 extensions. The request must be made by written motion, with copies to all parties, stating the initial due date, whether any other extension has been granted, the length of the requested extension, and whether the motion is opposed.

More than ordinary good cause is required for a Level 2 extension. The movant must demonstrate diligence and substantial need and must show in detail what special circumstances exist that make a Level 1 extension insufficient. Instead of acting on the motion, the clerk may refer it to the court. Opposed extensions may be acted upon only by the court.

31.4.3.3 Level 3 Extensions. Level 3 extensions shall be acted upon only by the court and are greatly disfavored. They will be granted only under extraordinary circumstances and for the most compelling reasons.

The motion shall state the initial due date, whether any other extension has been granted, the length of the requested extension, and whether the motion is opposed. The motion shall disclose facts that establish that with due diligence, and giving priority to the preparation of the brief, it is not reasonably possible to file the brief timely. Factual statements shall be set

forth with specificity. In cases in which a party may be in custody, the motion must state the custodial status, including the status of any bail.

31.4.4. Extensions for Reply Briefs. All extensions of time for filing reply briefs are greatly disfavored, as the court assumes that the parties have had ample opportunity to present their arguments in their initial briefs and that extensions for reply briefs only delay submission of the case to the court.

APPENDIX E

FRAP 34. ORAL ARGUMENT

(a) ***In General; Local Rule.*** Oral argument shall be allowed in all cases unless pursuant to local rule a panel of three judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. Any such local rule shall provide any party with an opportunity to file a statement setting forth the reasons why oral argument should be heard. A general statement of the criteria employed in the administration of such local rule shall be published in or with the rule and such criteria shall conform substantially to the following minimum standard:

Oral argument will be allowed unless

(1) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) ***Notice of Argument; Postponement.*** The clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

(c) ***Order and Content of Argument.*** The appellant is entitled to open and conclude the argument. Counsel may not read at length from briefs, records, or authorities.

(d) ***Cross and Separate Appeals.*** A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross appeal, the party who first files a notice of appeal, or in the event that the notices are filed on the same day the plaintiff in the proceeding below, shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) ***Non-appearance of Parties.*** If the appellee falls to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

(f) ***Submission on Briefs.*** By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) ***Use of Physical Exhibits at Argument; Removal.*** If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by

the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

FIFTH CIRCUIT RULE 34

34.1 Docket Control. *In the interest of docket control, the chief Judge may from time to time appoint a panel or panels to review pending cases for appropriate assignment or disposition under this rule or any other rule of this court.*

34.2 Oral Arguments. *Oral argument shall be allowed in all cases except those unanimously determined by a three-judge panel of the court to fall in 1 of the 3 categories specified by Fed. R. App. P. 34(a). Those cases will be placed on the summary calendar for decision without oral argument. Those cases to be orally argued will be calendared by the clerk based upon the court's calendaring priorities. Counsel for each party must present oral argument unless excused by the court for good cause shown. The oral argument docket will show the time the court has allotted for each argument. If counsel for all parties indicate pursuant to paragraph .3 of this rule that oral argument is not necessary, the case will be governed by Fed. R. App. P. 34(f).*

34.3 Submission Without Argument. *A party who desires to waive oral argument in a case noticed for oral argument must file a motion for permission to waive in advance of the date set for hearing.*

34.4 Number of Counsel To Be Heard. *Not more than 2 counsel will be heard for each party on the argument of a case, and the time allowed may be apportioned between counsel in their discretion.*

34.5 Expediting Appeals. *The court may, on its own motion or for good cause shown on motion of either party, advance any case for hearing, and prescribe an abbreviated briefing schedule.*

34.6 Continuance of Hearing. *After a case has been set for hearing, it may not be continued by stipulation of the parties or their counsel, but only by an order of the court on good cause shown. Engagement of counsel in other courts will not be considered good cause.*

34.7 Recording of Oral Arguments. *No cameras, tape recorders, or other equipment designed for the recording or transmission of visual images or sound may be present or used during oral argument; provided, however, that with the advance approval of the presiding judge, counsel may arrange, at their own expense, for a qualified court reporter to be present to record and transcribe oral argument. If it is the usual practice of such court reporter to do so, the reporter may make and utilize a sound recording for the sole purpose of preparing an accurate transcript, then must immediately destroy or erase the recording without making it available to counsel, a party, or any other person for any purpose. The court records oral argument for its exclusive use and does not make the tapes, or copies or transcripts thereof available to counsel, the parties, or any other person.*

34.8 Criminal Justice Act Cases. *The court expects court-appointed counsel to present oral argument. Presentation of oral argument by an associate attorney not appointed under the act will only be allowed under the most pressing and unusual circumstances, upon advance authorization.*

34.9 Checking In with Clerk's Office. *As provided on the calendar, on the day of hearing counsel should first check in*

with the clerk 30 minutes in advance of the convening of court to confirm with the courtroom deputy the name of the attorney or attorneys who will present argument for each party and how the argument time will be divided between opening and rebuttal. All counsel in the fourth and fifth cases on the docket heard in New Orleans have the privilege of checking in by telephone, but must report in person to the clerk's office within one hour after court convenes. On the last day of the New Orleans session, all attorneys must report in person to the clerk's office 30 minutes before court convenes.

34.10 Submission Without Argument. *When a case is placed on the oral argument calendar, a judge of the court has determined that oral argument would be helpful in that particular case. Therefore, requests of the parties to waive oral argument are not looked upon with favor, and counsel may be excused only by the court for good cause shown. See 5th Cir. R. 34.3.*

If appellant fails to appear in a criminal appeal from conviction, the court will not hear argument from the United States.

34.11 Time for Oral Argument. *The time for oral argument will be indicated on the printed calendar. Most cases are allowed 20 minutes to the side. The word "side" refers to parties in their position on appeal. Where in doubt, the clerk's office should be consulted.*

34.12 Additional Time for Oral Argument. *Additional time for oral argument is sparingly permitted. Requests for additional time for oral argument should be set forth in a motion or letter to the clerk filed well in advance of the oral argument.*

34.13 Calling the Calendar. *Usually the court will not call the calendar unless there are some special problems requiring*

attention. The court proceeds to hear the cases in the order in which they appear on the calendar.

* * *

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60098

TONY B JOBE, Assignee of Air New Orleans Inc

Plaintiff – Appellant

v.

ATR MARKETING, INC; AVIONS DE TRANSPORT REGIONAL, (G.I.E.); AEROSPATIALE, S.N.I.; FINMECCANICA S.P.A., Individually and doing business as Alenia (a division of Finmeccanica), also known as Aeritalia S.P.A. and the Successor in the Interest of Aeritalia; AEROSPATIALE, INC.; DEFENDANTS A-M

Defendants – Appellees

Appeal from the United States District Court for the Southern District of Mississippi, Hattiesburg

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(Filed Jul. 7, 1998)

ORDER:

IT IS ORDERED that motion of appellant to stay case pending litigation in related case number 96-3396-R in the Eastern District Court of Louisiana is denied.

IT IS FURTHERED ORDERED that motion of appellant to extend time to file appellant's brief for 45 days, up to and including August 20, 1998, is granted.

/s/ Robert M. Parker
ROBERT M. PARKER
UNITED STATES CIRCUIT JUDGE

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60098

TONY B JOBE, Assignee of Air New Orleans Inc

Plaintiff – Appellant

v.

ATR MARKETING, INC; AVIONS DE TRANSPORT REGIONAL, (G.I.E.); AEROSPATIALE, S.N.I.; FINMECCANICA S.P.A., Individually and doing business as Alenia (a division of Finmeccanica), also known as Aeritalia S.P.A. and the Successor in the Interest of Aeritalia; AEROSPATIALE, INC.; DEFENDANTS A-M

Defendants – Appellees

Appeal from the United States District Court for the Southern District of Mississippi, Hattiesburg

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(Filed Aug. 3, 1998)

ORDER:

IT IS ORDERED that appellant's motion to withdraw original brief and record excerpts, and to re-file within the forty-five (45) days previously granted, or, until August 20, 1998, is DENIED

/s/ Harold R. DeMoss, Jr.
HAROLD R. DeMOSS, JR.
UNITED STATES CIRCUIT JUDGE

APPENDIX H

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60098

TONY B JOBE, Assignee of Air New Orleans Inc

Plaintiff – Appellant

v.

ATR MARKETING, INC; AVIONS DE TRANSPORT REGIONAL, (G.I.E.); AEROSPATIALE, S.N.I.; FINMECCANICA S.P.A., Individually and doing business as Alenia (a division of-Finmeccanica), also known as Aeritalia S.P.A. and the Successor in the Interest of Aeritalia; AEROSPATIALE, INC.; DEFENDANTS A-M

Defendants – Appellees

Appeal from the United States District Court for the Southern District of Mississippi, Hattiesburg

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(Filed Sep. 16, 1998)

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellant's motion for leave to file motion for clarification and reconsideration of this Court's orders of July 7, 1998 and August 3, 1998 out of time is GRANTED

IT IS FURTHERED ORDERED that appellant's motion for clarification and reconsideration of this Court's orders of July 7, 1998 and August 3, 1998 is DENIED

IT IS FURTHER ORDERED that appellant's motion for an extension of time to file reply brief, to and including September 9, 1998 is GRANTED

IT IS FURTHER ORDERED that appellant's motion to substitute the appellant's brief on appeal is DENIED

/s/ EMG, HRD, FPB

APPENDIX I

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60098

TONY B JOBE, Assignee of Air New Orleans Inc

Plaintiff – Appellant

v.

ATR MARKETING, INC; AVIONS DE TRANSPORT REGIONAL, (G.I.E.); AEROSPATIALE, S.N.I.; FINMECCANICA S.P.A., Individually and doing business as Alenia (a division of Finmeccanica), also known as Aeritalia S.P.A. and the Successor in the Interest of Aeritalia; AEROSPATIALE, INC.; DEFENDANTS A-M

Defendants – Appellees

Appeal from the United States District Court for the Southern District of Mississippi, Hattiesburg

---

(Filed Nov. 13, 1998)

ORDER:

IT IS ORDERED that appellant's motion for leave to file reply brief out of time is DENIED

/s/ Harold R. DeMoss, Jr.
HAROLD R. DeMOSS, JR.
UNITED STATES CIRCUIT JUDGE

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY B. JOBE, ASSIGNEE OF
AIR NEW ORLEANS, INC. — Plaintiff

V. — CIVIL ACTION NO. 2:94cv18PS

ATR MARKETING, INC., ET AL — Defendants

COURT REPORTER'S TRANSCRIPT OF ORAL ARGUMENT ON DEFENDANTS' MOTION TO DISMISS

BEFORE HONORABLE CHARLES W. PICKERING, SR.
UNITED STATES DISTRICT COURT JUDGE

May 3, 1995
Hattiesburg, Mississippi

APPEARANCES:

MR. WAYNE E. FERRELL, JR.
P.O. Drawer 24448
Jackson, MS 39225-4448

MR. ORVIS A. SHIYOU, JR.
P.O. Box 310
Hattiesburg, MS 39403-0310

Representing the Plaintiff

EXHIBIT
"F"

[p. 2. APPEARANCES (CONT'D)

MR. GEORGE W. MILLER
555 Thirteenth St., N.W.
Washington, D.C. 20004

MR. ERIK MARTIN LOWREY
P.O. Box 485
Hattiesburg, MS 39403

Representing the Defendants

ALSO PRESENT: Mr. Tony B. Jobe, Plaintiff
Ms. Tammy Rogers, Secretary

COURT REPORTER:

Margaret A. Kinchen, RPR-CM
701 N. Main Street, Room 253
Hattiesburg, MS 39401
(601) 583-4383

* * *

[p. 31] THE COURT: Let me ask you why did you all file affidavits that y'all were doing no business in the State of Mississippi when you were doing millions of dollars of business in the State of Mississippi?

MR. MILLER: Your Honor, that affidavit was filed. It was believed to be true at the time it was filed. We later discovered it was erroneous. As soon as we discovered it, we advised Mr. Ferrell of that information.

THE COURT: But that was after he had issued subpoenas to a large number of companies?

MR. MILLER: That's true. We had discovered the information before he issued the subpoena. He had served answers to interrogatories. I had directed the client –

THE COURT: You had discovered it before he served the subpoenas?

MR. MILLER: Yes, sir.

THE COURT: But you did not reveal it to him until after he served the subpoenas?

MR. MILLER: Because he had served interrogatories that called for specific information about those contracts, and we were in the process of gathering that information. As soon as we got it, we supplemented our answers to interrogatories.

THE COURT: But in the meantime, he had issued those subpoenas which insured he was going to get it.

MR. MILLER: That is true. In the meantime –

[p. 32] THE COURT: Mr. Miller, I take very seriously filing affidavits that ain't true.

MR. MILLER: Your Honor, no more serious than I. I couldn't agree with you more. That's absolutely right. I take it very seriously.

THE COURT: Somebody somewhere were willing to sign something that they either were careless and they didn't know was false or that they deliberately knew it was false.

MR. MILLER: Well, they didn't deliberately know it was false. I can assure you of that, Your Honor.

THE COURT: Then they had to be careless.

MR. MILLER: They were careless. I agree with Your Honor. It was a mistake.

THE COURT: You're an officer of the court. Did you know that?

MR. MILLER: I did not know it. As soon as I became aware of these facts, I –

THE COURT: How long was it after you became aware of it before you let Mr. Ferrell know about it?

MR. MILLER: Within ten days or two weeks, Your Honor.

THE COURT: And it was during that interval that these subpoenas were issued?

MR. MILLER: That is correct. That is correct. But the information had come to the client's attention before that. [p. 33] The client advised me. I told the client, Look, find out this, that and the other thing. These were all things that had been asked for in interrogatories that Mr. Ferrell had served. I wanted to be able to supplement our answers to interrogatories. It took them a little while to get that information as soon as they got it, we supplemented our answers to interrogatories. We produced the contracts in question. I regret that the initial declaration turned out to be incorrect, but there was no intention to mislead the Court. As soon as we became aware of the true facts, we corrected the filing with the court. But I apologize for the initial filing.

THE COURT: All right. You may make your rebuttal.

MR. MILLER: Your Honor, one question was raised with respect to the anticipated place of delivery under the alleged contract. The alleged contract is Exhibit 8 to the defendants' reply to plaintiff's amended response

to defendants' motion to dismiss. Exhibit 8 is the proposal dated December 5, 1986, made by Avions De Transport Regional to Air New Orleans. And in the very first paragraph on page 1, it is stated, "Subsequent delivery of the aircraft being implemented in Toulouse (France)." There is no dispute, Your Honor, that delivery was contemplated to be made in France in this case, not in New Orleans or in Mississippi as was perhaps suggested inadvertently in Mr. Ferrell's argument.

Secondly, with respect to the cases that Mr. Ferrell drew

* * *

[p. 38] CERTIFICATE OF COURT REPORTER

I, Margaret A. Kinchen, CSR, RPR-CM, Official Court Reporter for the United States District Court for the Southern District of Mississippi, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled and numbered cause.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/s/ Margaret A. Kinchen
MARGARET A. KINCHEN, RPR-CM
OFFICIAL COURT REPORTER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY B. JOBE, Assignee of
AIR NEW ORLEANS, INC.,

Plaintiff,

v. No. 2:94-CV-18PS

ATR MARKETING, INC., AEROSPATIALE,
AERITALIA, and AVIONS de TRANSPORT
REGIONAL (G.I.E.),

Defendants.

DEFENDANTS' MOTION FOR SANCTIONS AGAINST PLAINTIFF'S COUNSEL

(Filed May 24, 1995)

Pursuant to this Court's inherent power, 28 U.S.C. § 1927, and the Mississippi Litigation Accountability Act, Defendants hereby move for sanctions against Plaintiff's counsel, including an award of the reasonable attorneys' fees and expenses incurred by Defendants in this matter.

Prior to filing the Complaint, Plaintiff's counsel failed to conduct any investigation into whether this Court had jurisdiction over Defendants. After taking discovery from Defendants, Plaintiff's counsel still lacked any factual support for the exercise of jurisdiction over Defendants, yet he continued to argue that jurisdiction was proper.

In addition, throughout this litigation, Plaintiff's counsel has advanced spurious legal theories, made factual representations without first conducting an investigation into the accuracy of those representations, misrepresented facts to the Court, made reckless allegations of impropriety against Defendants and their counsel, engaged in unreasonable and vexatious discovery, and violated Court Orders.

By reason of such conduct, which is more fully set forth in the attached Memorandum of Authorities in Support of Defendants' Motion for Sanctions Against Plaintiff's Counsel, Defendants ask the Court to award to them, as sanctions against Plaintiff's counsel, an amount equal to the attorneys' fees and expenses reasonably incurred by Defendants in this action.

Pursuant to Local Rule 8(f), counsel for Defendants requests oral argument on this motion.

Respectfully submitted,

/s/ Erik M. Lowrey
Erik M. Lowrey
ERIK M. LOWREY, P.A.
214 West Pine Street
Hattiesburg, Mississippi
39403-0485
601/582-5015
State Bar. No. 1466

Attorney for Defendants

OF COUNSEL:
George W. Miller,
PHV No. 40715
James J. Moore,
PHV No. 40716
HOGAN & HARTSON
L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
202/637-6575

Dated: May 24, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY JOBE, Assignee of
AIR NEW ORLEANS, INC. — PLAINTIFF

VERSUS — 2:94-CV-18PS

ATR MARKETING, INC.,
AEROSPATIALE
AERITALIA, and
AVIONS de TRANSPORT
REGIONAL (G.I.E.) — DEFENDANTS

ORDER

(Filed Sep. 27, 1994)

This matter is before the Court on defendants' motion to dismiss, plaintiff's motion for leave to amend complaint and for status conference to establish limited discovery schedule regarding jurisdictional issues. The Court, having heard from counsel for all parties and being fully advised in the premises, finds as follows, to-wit;

That in the interest of judicial economy and commensurate with the parties' interest in concluding this matter as expeditiously as possible, the plaintiff should be allowed to amend his complaint and then be allowed to conduct limited discovery directed at only the jurisdictional issues addressed in defendants' motion to dismiss before the Court rules thereon.

IT IS THEREFORE ORDERED;

That plaintiff shall file his amended complaint by October 7, 1994;

That the plaintiff shall submit to the defendants a particularized statement of the subject matter of the

discovery needed to respond to defendants' motion to dismiss by October 4, 1994;

That the parties are to agree on the subject matter of the discovery needed for the plaintiff to respond to defendants' motion to dismiss by October 12, 1994, and that if the parties cannot agree on such subject matter, they shall submit simultaneous briefs on the issue to the Court by October 17, 1994;

That the parties shall conduct any of the limited discovery agreed upon by the parties by December 12, 1994; or within sixty (60) calendar days of the Court order establishing the permitted discovery if necessary for the Court to enter such an order in the event the parties are unable to agree on the permitted discovery;

That within five (5) calendar days after the permitted discovery is completed, the plaintiff shall submit any supplemental response he wishes to defendants' motion to dismiss;

That within five (5) working days after the plaintiff submits any supplemental response to defendants' motion to dismiss he chooses, the defendants shall submit any supplemental rebuttal they wish in support of their motion to dismiss.

SO ORDERED AND ADJUDGED this the 27th day of September, 1994.

/s/ Charles W. Pickering, Sr.
CHARLES W. PICKERING, SR.
UNITED STATES
DISTRICT JUDGE

HOGAN & HARTSON
L.L.P.
COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

[Names and Cities Omitted In Printing]

October 11, 1994

BY TELECOPY AND FIRST CLASS MAIL

Wayne E. Ferrell, Jr., Esq.
Ferrell & Hubbard
405 Tombigbee Street
Jackson, Mississippi 39201

Re: *Jobe v. ATR Marketing Inc., et al.*, No. 2:94-CV-18PS, U.S.D.C. S.D. Miss.

Dear Wayne:

Pursuant to Judge Pickering's September 27, 1994 Order, I called today to discuss "the subject matter of the discovery needed for the plaintiff to respond to defendants' motion to dismiss." After I had outlined defendants' proposal, you asked that I reduce our proposal to writing and send it to you with a copy to Terry O'Reilly. This letter is in response to your request.

Frankly, I was surprised and disappointed when I received plaintiff's "Particularized Statement of Subject Matter of Discovery." It may be that we have a difference of views as to the meaning of the word "particularized" in this context, but plaintiff's statement seemed to me to be "partizularized" in name only. In fact, the requests –

and I have approached the twenty-eight numbered paragraphs initially as interrogatories – appear to be broader, more onerous and less "particularized" than the interrogatories that plaintiff served on defendants just prior to the July 20, 1994 case management conference. Having reviewed those interrogatories, Magistrate Judge Sumner concluded in his Order of the same date "that discovery in this cause should be stayed pending resolution of defendants' pending motion to dismiss by the United States District Judge." Similarly, in his July 27, 1994 Case Management Plan Order, Magistrate Judge Sumner stated: "All discovery shall be held in abeyance until pending motions are ruled upon at which time a scheduling order shall be entered." Plaintiff's so-called "particularized statement" seems to me to be the antithesis of a showing, as described by Magistrate Judge Sumner, of "an adequate and specific need for particularized discovery related to the issues which are the subject of the pending motion." Similarly, Judge Pickering's Order of September 27 contemplated that the parties should agree upon "limited discovery."

Accordingly, in an effort to reach agreement on a fair, reasonable and expeditious procedure for developing the information needed for a resolution of defendants' motion within the period provided for by the Order of September 27, we propose the following:

1) Plaintiff will take telephonic depositions of some or all of the individuals who have submitted Declarations in support of defendants' motion to dismiss. Defendants will make the declarants available for such depositions upon reasonable notice and will also provide beforehand the biographical information described in ¶¶ 17-21 of

plaintiff's "particularized statement." If the deposition testimony identifies any areas where it appears that further particularized discovery would be fruitful, the parties will conduct such discovery or defendants will simply provide the information in question.

2) Beyond providing the biographical information and making the declarants available for telephonic depositions, defendants will provide information by way of answers to interrogatories responsive to ¶ 9 (limited to the corporate history of the defendants, i.e., not including information relating to parents, subsidiaries and affiliates); ¶ 14 (with respect to suits brought against any defendant in Mississippi); and ¶ 15 (with respect to distributors appointed in Mississippi).

3) Defendants will also respond by way of answers to interrogatories to ¶¶ 8, 10, 12, 16, and 22-27 to the extent that such paragraphs seek information relating to contacts with Mississippi. We do not see how information relating to contacts with other states could be relevant to the question whether there exists a basis for the exercise of personal jurisdiction over the defendants in Mississippi, although we are open to persuasion on the point.

4) Once the foregoing discovery is completed, the parties will again consider the necessity vel non for defendants to respond to any of the remaining paragraphs of plaintiff's "particularized statement."

To the degree you feel that our proposal as set forth above is inadequate to permit discovery of some relevant material, I would be happy to discuss with you in more

detail our present, specific concerns about the scope, relevance and duplicative character of the remaining paragraphs of plaintiff's "particularized statement."

Because Judge Pickering's Order enjoins the parties to agree on the scope of jurisdictional discovery by October 12 or submit briefs by October 17, I would appreciate hearing from you promptly.

Since the court's October 7, 1994 deadline for plaintiff to file an amended complaint has come and gone without service of such a pleading on defendants, I assume plaintiff has decided not to file an amended complaint.

Sincerely,

/s/ George
George W. Miller

cc: Erik M. Lowrey, Esq.
Terry O'Reilly, Esq.

EXHIBIT "B"

HOGAN & HARTSON

L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

[Names and Cities Omitted In Printing]

November 21, 1994

BY FEDERAL EXPRESS

Wayne E. Ferrell, Jr., Esq.
Ferrell & Hubbard
405 Tombigbee Street
Jackson, Mississippi 39201

Re: ***Jobe v. ATR Marketing Inc., et al.,***
No. 2:94-CV-18PS, U.S.D.C. S.D. Miss.

Dear Wayne:

Enclosed please find the information we promised in our agreement on the scope of discovery with respect to personal jurisdiction. Specifically, I am enclosing a Response to Certain Requests for Information Described in Plaintiff's "Particularized Statement of Subject Matter of Discovery" for defendants Aerospatiale, Inc., ATR Marketing, Inc., Avions de Transport Regional, G.I.E., and Aerospatiale, S.N.I. Pursuant to our agreement, each response contains information by way of answers to interrogatories responsive to ¶¶ 8-10,12, 14-16, and 22-27 of plaintiff's "particularized statement." The responses of defendants Aerospatiale, Inc. and ATR Marketing, Inc. have been executed by an appropriate officer. The responses of Avions de Transport Regional, G.I.E. and

Aerospatiale, S.N.I. have not yet been executed, but the substance of these responses has been approved for each entity by an appropriate officer. We recently sent originals of these documents to France for execution, and we will forward to you copies of executed responses for these two entities as soon as we receive them. In addition, we are working on the response for defendant Finmeccanica, S.p.A., and will forward that response to you as soon as possible.

On another matter, you previously expressed a desire to take the telephonic depositions of some or all of the individuals who submitted Declarations in support of Defendants' Motion to Dismiss. However, we have heard nothing from you regarding the scheduling of such depositions. As I stated in my October 11, 1994 letter, we are willing to make these declarants available for such depositions upon reasonable notice. If you are still interested in taking telephonic depositions of some or all of the declarants, we would be happy to cooperate in scheduling them within the sixty-day discovery period provided for in Judge Pickering's September 27, 1994 Order, which ends in mid-December. Please let me know how you wish to proceed.

Sincerely,

/s/ George
George W. Miller

Enclosures

cc: Erik M. Lowrey, Esq.
Terry O'Reilly, Esq.

Erik M. Lowrey, P.A.

Attorney at Law
214 West Pine Street
Hattiesburg, Mississippi 39403-0485

Mailing Address:
P.O. Box 485

Phone: 601-582-5015
FAX: 601-582-5046

October 17, 1994

HAND DELIVERED

Judge Charles Pickering
P.O. Box 1896
Hattiesburg, MS 39401

RE: ***JOBE V. ATR MARKETING INC., et al.,***
No. 2:94-CV-18PS, U.S.D.C. S.D. Miss.

Dear Judge Pickering

In accordance with Your Honor's Order of September 27, 1994 the parties have reached agreement on a program of discovery to be conducted with respect to the issues of personal jurisdiction. In so doing, they have agreed to defer resolution of several contested matters until completion of the agreed discovery. At that time, the parties may be able to reach agreement on the contested items in view of the nature of the discovery that will have occurred by that time. If they are unable to do so, however, they would request leave to bring those contested matters to the Court's attention for resolution at that time and prior to the conclusion of the 60 day period provided for in the Court's September 27 Order.

In view of their agreement, the parties do not plan to file briefs today setting forth their positions on the

appropriate scope of discovery. We trust that the Court will let the parties know if the foregoing mode of proceeding is in any way unsatisfactory to the Court.

Sincerely yours,

/s/ Erik
Erik M. Lowrey

cc: Wayne Ferrell, Esquire
Terry O'Reilly, Esquire
Al Shiyou, Esquire
George Miller, Esquire

HOGAN & HARTSON
L.L.P.
COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

[Names and Cities Omitted In Printing]

October 14, 1994

BY TELECOPY AND FIRST CLASS MAIL

Wayne E. Ferrell, Jr., Esq.
Ferrell & Hubbard
405 Tombigbee Street
Jackson, Mississippi 39201

Re: *Jobe v. ATR Marketing Inc., et al.*, No. 2:94-CV-18PS, U.S.D.C. S.D. Miss.

Dear Wayne:

Following up on our telephone conversation this afternoon, I suggest that the joint letter to be sent to Judge Pickering on Monday read as follows:

Dear Judge Pickering:

> In accordance with Your Honor's Order of September 27, 1994, the parties have reached agreement on a program of discovery to be conducted with respect to the issue of personal jurisdiction. In so doing, they have agreed to defer resolution of several contested matters until completion of the agreed discovery. At that time, the parties may be able to reach agreement on the contested items in view of the nature of the discovery that will have occurred by that time. If they are unable to do so, however, they would request leave to bring those contested matters to the Court's attention for resolution at that time and prior to the conclusion of the 60-day period provided for in the Court's September 27 Order.
>
> In view of their agreement, the parties do not plan to file briefs today setting forth their positions on the appropriate scope of discovery. We trust that the Court will let the parties know if the foregoing mode of proceeding is in any way unsatisfactory to the Court.

The "contested matters" to which reference is made in the proposed joint letter to Judge Pickering are plaintiff's claim of entitlement to the information described in paragraphs 1 through 6 of plaintiff's so-called "Particularized Statement" served October 4. The "program of discovery to be conducted" refers to the proposal made by defendants in my letter dated October 11, 1994.

Although I neglected to mention this matter when we spoke on the phone this afternoon (for which I apologize), we would also propose that the parties agree that defendants shall provide discovery in accordance with

their October 11 proposal for the period from 1985 to the present, unless plaintiff's "Particularized Statement" calls for information covering a shorter period.

Please let me know if the foregoing is satisfactory to you and Terry. If it is, I will ask Erik to hand-deliver the agreed letter to Judge Pickering on Monday with copies to all other counsel.

Sincerely,

/s/ George
George W. Miller

cc: Erik M. Lowrey, Esq.
Terry O'Reilly, Esq.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY JOBE, Assignee of
AIR NEW ORLEANS, INC.,

Plaintiff,

v. NO. 2:94-CV-18PS

ATR MARKETING, INC., AEROSPATIALE, AERITALIA, and AVIONS de TRANSPORT REGIONAL (G.I.E),

Defendants.

AMENDED ORDER

(Filed Jan. 4, 1995)

This matter having come on for hearing on the joint Motion of the parties to extend the limited jurisdictional discovery period and time for responding to Defendants' Motion to Dismiss, and the Court having considered the matter and being fully advised in the premises, finds that the Motion is well taken and should be sustained.

IT IS, THEREFORE, ORDERED:

That the Order entered on the 27th day of September, 1994, be amended and the parties shall conduct any of the limited discovery agreed upon by the parties by January 20, 1995.

That the Plaintiff shall file any response or supplemental response that he wishes to be filed to Defendants' Motion to Dismiss by January 27, 1995; and

That the Defendants shall submit any supplemental rebuttal they wish to file in support of their Motion to Dismiss or in response to Plaintiff's responses and/or supplemental responses by February 3, 1995.

SO ORDERED AND ADJUDGED this the 4th day of January, 1995.

/s/ Charles W. Pickering, Sr.
CHARLES W. PICKERING, SR.
UNITED STATES DISTRICT JUDGE

APPROVED AS TO SUBSTANCE AND FORM:

/s/ Wayne E. Ferrell, Jr.
Wayne E. Ferrell, Jr.
FERRELL & HUBBARD
405 Tombigbee Street
Jackson, Mississippi 39201
601/969-4700

/s/ Terry O'Reilly
Terry O'Reilly
O'REILLY & COLLINS
A Professional Corporation
2500 Sand Hill Road, Suite 201
Menlo Park, CA 94025
(415) 854-8350

Attorneys for Plaintiff

/s/ George W. Miller
George W. Miller, PHV No. 40715
James J. Moore, PHV No. 40716
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
202/637-6575

/s/ Erik M. Lowrey
Erik M. Lowrey
ERIK M. LOWREY, P.A.
214 West Pine Street
Hattiesburg, Mississippi 39403-0485
601/582-5015
State Bar No. 1466

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY JOBE, Assignee of
AIR NEW ORLEANS, INC.,

PLAINTIFF

VS. CIVIL ACTION NO. 2-94-CV-18(R)(S)

ATR MARKETING, INC., ET AL.

DEFENDANTS

NOTICE OF WITHDRAWAL OF SUBPOENA
AND SUBPOENA DUCES TECUM

(Filed Jan. 27, 1995)

Now comes the plaintiff, by and through his attorneys, and serves notice that he has this day withdrawn the subpoena and subpoena duces tecum served upon Beech Aerospace Services, Inc., on or about January 5, 1995. Beech Aerospace Services, Inc., is excused from complying with the subpoena and subpoena duces tecum.

Respectfully submitted,

TONY JOBE, Assignee of Air New Orleans, Inc., Plaintiff

By: /s/ Wayne E. Ferrell, Jr.
Wayne E. Ferrell, Jr.,
His Attorney

CERTIFICATE OF SERVICE

I, Wayne E. Ferrell, Jr., attorney for plaintiff, do hereby certify that I have this day forwarded by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Notice of Withdrawal to the following attorneys:

George W. Miller, Esq.
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

Erick M. Lowrey, Esq.
214 West Pine Street
Hattiesburg, MS 39403-0485

This the 25th day of JANUARY, 1995.

/s/ Wayne E. Ferrell, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY JOBE, ASSIGNEE OF
AIR NEW ORLEANS, INC.,

PLAINTIFF

VS. CIVIL ACTION NO. 2:94-CV-18RS

ATR MARKETING, INC., ET AL.

DEFENDANTS

ORDER

(Filed Jan. 31, 1995)

This cause is before the Court on the Objection and Motion to Quash or Modify Subpoena filed by Beech Aerospace Services, Inc. ("Beech"). Having been informed by counsel for Beech that the parties have solved this matter, the Court finds that the Motion is moot and should be denied.

IT IS THEREFORE ORDERED that the Objection and Motion to Quash or Modify Subpoena filed by Beech Aerospace Services, Inc. should be and hereby is **denied** as moot.

SO ORDERED this the 30 day of January, 1995.

/s/ James C. Sumner
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY B. JOBE, Assignee of
AIR NEW ORLEANS, INC.,

PLAINTIFF

VS. CIVIL ACTION NO. 2:94cv18PS

ATR MARKETING, INC., AEROSPATIALE,
AERITALIA, AND AVIONS de TRANSPORT
REGIONAL (G.I.E.)

DEFENDANTS

AGREED ORDER WITHDRAWING
SUBPOENAS DUCES TECUM

(Filed Feb. 1, 1995)

THIS MATTER is before the Court on the objection of the United States of America on behalf of the Department of the Air Force and the Department of the Navy regarding three deposition subpoenas duces tecum heretofore issued to said departments at the instance of the plaintiff. Pursuant to this Court's January 24, 1995 Order on Objection of United States of America Relative to Subpoena Duces Tecums Served on the Departments of the Navy and Air Force by Plaintiff, the United States and the plaintiff have conferred regarding said objection and have agreed to the withdrawal of the subpoenas by plaintiff. This agreement is evidenced by the affixed signatures of counsel for the United States and counsel for the plaintiff. The Court, being otherwise fully advised in the premises, finds that the agreement of the United States

and the plaintiff should be ratified, approved, and adopted as the order of this Court. Accordingly, it is

ORDERED that, upon agreement of counsel for the United States and for the plaintiff, the subpoenas duces tecum issued in this action on January 6, 1995 at the instance of the plaintiff for (1) Keesler Air Force, 81 TRW/JAA, 500 Fisher St., Suite 227, Keesler Air Force Base, MS 39534, (2) U.S. Navy Constructing Office, Supervision of Shipbuilding, Conversion and Repairing, Pascagoula, Mississippi 39568-7003, and (3) U.S. Navy, Naval Air Station, Meridian, Mississippi be, and they are hereby, withdrawn.

SO ORDERED on this, the 31st day of January, 1995.

/s/ Charles W. Pickering, Sr.
UNITED STATES DISTRICT JUDGE

AGREED TO:

/s/ Wayne E. Ferrell, Jr.
WAYNE E. FERRELL, JR.
Attorney for Plaintiff

/s/ Stephen R. Graben
STEPHEN R. GRABEN
Assistant United States Attorney
Attorney for United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY B. JOBE, Assignee of
AIR NEW ORLEANS, INC. **PLAINTIFF**

VERSUS **CIVIL ACTION NO. 2:94-CV-18PS**

ATR MARKETING, INC.,
AEROSPATIALE, AERITALIA,
and AVIONS de TRANSPORT
REGIONAL (G.I.E.) **DEFENDANTS**

ORDER ON DEFENDANTS' EMERGENCY MOTION TO ENFORCE ORDER GOVERNING DISCOVERY ON PERSONAL JURISDICTION AND TO QUASH PLAINTIFF'S SUBPOENAS SERVED UPON THIRTEEN NON-PARTIES

(Filed Jan. 24, 1995)

This matter comes before the Court on Defendants' Emergency Motion to Enforce Order Governing Discovery on Personal Jurisdiction and to Quash Plaintiff's Subpoenas Served Upon Thirteen Non-Parties or in the alternative to limit said subpoenas to the question of whether or not Defendants conduct business within the State of Mississippi with any of said thirteen non-parties. To rule on this Motion it is appropriate for the Court to consider what has transpired in this case. This Court previously entered an Order that due to the peculiar facts and allegations of this particular case that discovery should be limited to that discovery necessary for this Court to rule on the Motion to dismiss for lack of personal jurisdiction. Plaintiff was given a limited time to conduct this discovery. At about the time of the discovery

cutoff, the parties advised the Court that the Christmas holidays were approaching and that they needed a slight extension so that Plaintiff could complete his discovery. Plaintiff represented to the Defendants, and on the basis of such representation, Defendants joined in Plaintiff's request for this extension that Plaintiff needed to depose certain representatives of Defendant. Based upon this representation, the Court extended the discovery deadline. Shortly after the Court entered its Order, Plaintiff noticed the depositions of and issued subpoenas to thirteen non-parties seeking discovery on matters clearly beyond the limited discovery permitted by the Court's previous order.

After Defendants filed their Emergency Motion, this Court conducted a telephone conference with counsel for the parties. Even though counsel for the Defendants expressed the feeling that Defendants had agreed to the extension in discovery thinking that the only discovery that was contemplated by the Plaintiff was the taking of deposition of representatives of the Defendants, nevertheless Defendants agreed that they did not object and would agree to Plaintiff's discovery from these thirteen non-parties of any information relating to business conducted by such non-parties with the Defendants within the State of Mississippi. The Court expressed to the Plaintiff that it was the Court's impression without research that this was all of the information that Plaintiff was entitled to under the previous order of this Court and that Plaintiff had demonstrated no justification for discovery beyond that relating to business conducted by Defendants within the State of Mississippi. Plaintiff represented to the Court that he had a Mississippi Supreme

Court decision that held that if a Mississippi corporation did business with a foreign corporation in another state and that such business resulted in profits to the Mississippi corporation and thus benefits to the stockholders of that corporation that such evidence would be relevant on the question of personal jurisdiction under the "doing business" prong of the test for such determination. The Court directed Plaintiff to forthwith immediately, that day fax such case to counsel for Defendants. Since the Court had not had an opportunity to review this case and since the parties were in agreement about the discovery related to business done between the thirteen non-parties and Defendants within the State of Mississippi and based upon Plaintiff's representation that he had a specific case which he could show to the Defendants, it was the Court's opinion that the parties should be able to limit the discovery of these thirteen non-parties after reviewing and discussing this case and in view of the agreement that had previously been reached. The parties have not been able to reach agreement as it appears that Plaintiff has insisted that it has a right to unlimited discovery with these thirteen non-parties as reflected by the subpoena duces tecums issued to these thirteen non-parties and it further appears that Plaintiff did not produce to Defendants the case which Plaintiff had represented to this Court existed as Plaintiff did not cite any such authority in its brief on this question now before this Court.

It further appears that Defendants provided to Plaintiff certain information relating to Defendants doing business in Mississippi that it had not previously provided and that this information was provided after Plaintiff issued the subpoenas to the thirteen non-parties.

In view of the foregoing and in view and consideration of the numerous conferences both in person and by telephone that this Court has had with counsel for the parties, the Court finds and orders as follows:

1. The discovery sought by the Plaintiff against the thirteen non-parties is limited in accordance with the Court's previous order limiting discovery in this matter. Plaintiff is entitled to discover from these thirteen non-parties any information that these non-parties have relative to contacts and business that these thirteen non-parties have conducted with the Defendants within the State of Mississippi and no more.

2. Based on the past history of this case, this Court feels it appropriate to remind the parties of that which they should already know. It is inappropriate for either party to take and maintain a position that is not reasonably well supported in fact and/or law. It is entirely inappropriate and this Court takes a very dim view of withholding information. The parties should be forthcoming and candid with one another. In view of the fact that these issues have arisen, the Court specifically calls attention of the parties to Rules 16, 11 and 37. In the future, if appropriate, if any party takes a position not reasonably well-grounded in fact and/or law or if either side withholds information from the other side, this Court will impose sanctions under one or more of the above rules.

SO ORDERED AND ADJUDGED this the 24th day of January, 1995.

/s/ Charles W. Pickering, Sr.
CHARLES W. PICKERING, SR.
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY JOBE, Individually and as
Assignee of AIR NEW ORLEANS, INC. PLAINTIFF

V.

ATR MARKETING, INC.; CIVIL ACTION
AEROSPATIALE, S.N.I.; NO. 2:94-CV-18PS
FINMECCANICA S.p.A., Individually
and d/b/a ALENIA (a division
of Finmeccanica) a/k/a
AERITALIA S.p.A. and the
Successor in the Interest of Aeritalia;
AVIONS de TRANSPORT
REGIONALE, (G.I.E.); AEROSPATIALE, INC.;
and DEFENDANTS A through M DEFENDANTS

MOTION TO STRIKE RESPONSIVE PLEADINGS FILED BY THE DEFENDANTS; MOTION FOR ENTRY OF DEFAULT JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR SANCTIONS INCLUDING, BUT NOT LIMITED TO, DENIAL OF DEFENDANTS' MOTION TO DISMISS FOR FILING FALSE DECLARATIONS UNDER PENALTY OF PERJURY AND FOR DEFENDANTS' FAILURE TO PROVIDE INFORMATION AS ORDERED BY THE COURT

REQUEST FOR ORAL ARGUMENT

(Filed Feb. 07, 1995)

Plaintiff, Tony Jobe, Assignee of Air New Orleans, Inc., pursuant to Rules 11 and 37, Federal Rules of Civil Procedure, the Mississippi Litigation Accountability Act and other applicable laws, moves the Court for an Order

striking the responsive pleadings filed by the Defendants, for an Order entering default judgment against the Defendants and for an Order setting hearing on issue of Plaintiff's damages; or, in the alternative, an Order imposing other sanctions (including, but not limited to, denial of Defendants' Motions to Dismiss) against the Defendants for submitting false Declarations under penalty of perjury which were made either intentionally or without reasonably diligent inquiry and effort to ascertain that the statements contained therein were true; for submitting false and misleading responses to Plaintiff's Particularized Statement of Subject Matter of Discovery; for Defendants' attempted concealment of evidence; and/or their careless disregard for their duties to use due diligence in searching for relevant evidence and verifying the accuracy of facts contained in the Response to Plaintiff's Particularized Statement of Facts and asserted by the Defendants' representatives in depositions, which evidence was not otherwise accessible to the Plaintiff. Alternatively, Plaintiff moves the Court for an Order compelling the Defendants to completely and fully respond to the Particularized Statement of Subject Matter of Discovery (without further withholding of information); an Order compelling the Defendants to produce the documents requested by the Plaintiff in Plaintiff's Request for Production of Documents; and an Order imposing sanctions against the Defendants including, but not limited to, an Order compelling the Defendants to produce all representatives who have been to the State of Mississippi and/or have any knowledge about business done in the State of Mississippi at their respective offices in France and Italy, and compelling the Defendants to pay

Plaintiff's attorneys reasonable fees and expenses incurred in taking the depositions in France and Italy, along with court reporter and interpreter fees and expenses. Further, in the alternative, the Plaintiff moves the Court for an Order extending the discovery deadline (on the issue of jurisdiction) and the due date for Plaintiff's Response to Defendants' Motions to Dismiss until after the Plaintiff receives the information concealed by the Defendants. In support of Plaintiff's Motion, the Plaintiff would show unto the Court the following:

1. The Plaintiff filed his Complaint in the above styled and numbered cause on or about January 12, 1994, and propounded discovery to the Defendants on or about July 14, 1994.

2. Defendants filed Motions to Dismiss asserting lack of personal jurisdiction, untimeliness under the statute of limitations, and insufficiency of process as to Defendants, Aerospatiale, Avions de Transport Regionale (G.I.E.), Aeritalia and Finmeccanica. Thereafter, Plaintiff filed a Motion to Hold Defendants' Motion to Dismiss in Abeyance Pending Completion of Discovery or, Alternatively, for Additional Time to Respond to Motion to Dismiss.

3. On July 20, 1994, United States Magistrate Judge, The Honorable James C. Sumner, entered an Order denying Plaintiff's Motion and staying discovery pending resolution of Defendants' Motion to Dismiss.

4. On or about September 25, 1994, the Court considered Defendants' Motions to Dismiss, Plaintiff's Motion for Leave to Amend Complaint, and held a status conference to establish a limited discovery schedule

regarding jurisdictional issues. The Court thereafter entered an Order on September 27, 1994, ordering the Plaintiff to file his Amended Complaint by October 7, 1994; the Plaintiff to submit to the Defendants the Particularized Statements of Subject Matter and Discovery; the Plaintiff to respond to Defendants' Motion to Dismiss; and, the parties to agree upon the subject matter of and conduct discovery. A copy of the September 27, 1994 Order is attached hereto as Exhibit "A" and incorporated herein by reference.

5. The deadlines contained in the Order entered on September 27, 1994 were extended by agreement of the parties. A copy of that Order dated January 4, 1995 is attached hereto as Exhibit "B" and incorporated herein by reference.

6. Prior to entry of the Court's September 27, 1994 Order, the Defendants, apparently believing that the Court was not going to permit discovery on the issue of *in personam* jurisdiction, caused to be filed Declarations under penalty of perjury of five (5) individuals, Thierry Tuot, Alain Brodin, Greggory Bradford, Roberto Camiz and Joel Le Breton. Some of the Declarations were false and Defendants either knew that the Declarations were false or should have known that they were false at the time that they were made and filed with the Court. Copies of those Declarations are attached hereto as Exhibits "C" (Tuot), "D" (Brodin), "E" (Bradford), "F" (Camiz) and "G" (Le Breton), respectively, and incorporated herein by reference.

7. After the Court ordered the Defendants to agree on limited discovery, the Defendants then submitted to

the Plaintiff responses on behalf of each of the Defendants to Certain Requests for Information Described in Plaintiff's Particularized Statement of Subject Matter of Discovery. Two of these Responses were signed and the others were submitted unsigned (and some were false). Copies of those Particularized Statements are attached hereto as Exhibits "H", "I", "J", "K" and "L", and incorporated herein by reference.

8. At Plaintiff's request, Defendant, Aerospatiale, S.N.I., through its attorney, provided the Plaintiff with a summary of the biographical information on Mr. Bradford, Mr. Tuot, Mr. Le Breton, and Mr. Brodin. A copy of the letter containing that summary is attached hereto as Exhibit "M" and incorporated herein by reference. As shown by Exhibit "M", two of the individuals that the Defendants claimed knew the most about business conducted from 1985 to 1994 in the state of Mississippi by the Defendants were not even employed by any of the Defendants for part of the period of time in question from 1985 to 1990. Exhibit "M" reflects that Mr. Bradford began working with Aerospatiale, S.N.I. in November, 1990 and remained there until January 1, 1991, when he joined Aerospatiale, Inc.; Mr. Tuot joined Aerospatiale, S.N.I. as general counsel and Vice President of Legal Affairs in January of 1991. Therefore, these two individuals had no personal knowledge of this issue.

9. Roberto Camiz was one of the individuals who submitted a Declaration swearing that he had knowledge of the contracts of the Defendants with the state of Mississippi. Mr. Camiz, when deposed however, admitted that he had no personal knowledge about any of the things contained in the Declaration that he signed under

penalty of perjury and that the information contained in his Declaration Under Penalty of Perjury and in the Response to Particularized Statement of Fact was solely based upon his conversations with other lawyers in other departments of Finmeccanica. Mr. Camiz did not have any idea about what kind of investigation the other lawyers made to give him information before he signed the Declaration Under Penalty of Perjury, and before he prepared the Response to Particularized Statement of Fact. The relevant portions of Mr. Camiz' deposition are attached hereto as Exhibit "N" and incorporated herein by reference.

10. Despite Mr. Camiz' statement that none of the divisions of Finmeccanica nor Finmeccanica did any business or had any contact with any person, corporation, partnership, entity or governmental subdivision in the State of Mississippi, Alenia, a division of Finmeccanica, appears on the customer list of Vickers, Inc., a Mississippi based company. A copy of the customer list for Vickers, Inc. is attached hereto as Exhibit "O" and incorporated herein by reference. Further, in spite of Mr. Camiz' Declaration Under Penalty of Perjury and in spite of the information that he provided to the Court in his deposition, Plaintiff has discovered that representatives of Alenia attended the Vickers Aerospace Conference in Jackson, Mississippi on November 4-6, 1991. A copy of the 1991 Minutes of that meeting are attached hereto as Exhibit "P" and incorporated herein by reference.

11. The Defendant, Aerospatiale, S.N.I., provided the Court with a false Declaration Under Penalty of Perjury by Thierry Tuot on June 27, 1994, and later provided to the Plaintiff unsigned false responses to certain

requests for information dated November 1994. After subpoenas were issued by the Plaintiff to Vickers and other nonparties, Defendants, through their attorney, acknowledged on or about January 13, 1995, that, contrary to the Declarations Under Penalty of Perjury, and earlier representations to the Court and to the Plaintiff, the Defendant, Aerospatiale, S.N.I., did in fact do business totalling $3,700,000.00 in the state of Mississippi in 1993; that Aerospatiale, S.N.I. had two contracts with Vickers, Inc., one in 1970 and one in 1989; that Aerospatiale purchased hydraulic pumps from Vickers every year beginning in 1970 until the present time; and that Aerospatiale had three different representatives representing three different divisions of Aerospatiale in the state of Mississippi in 1993.

12. The Defendants have not supplied, in violation of this Court's Orders, the information and documents in its possession, custody or control concerning this and other business conducted in Mississippi from 1985 to 1993. Plaintiff incorporates herein by reference the following:

(a) Declaration of Thierry Tuot dated June 27, 1994 which is attached hereto as Exhibit "C";

(b) Defendant's, Aerospatiale, S.N.I., original unsigned Responses to Certain Requests for Information dated November 1994 which is attached hereto as Exhibit "H";

(c) Defendant's, Aerospatiale, S.N.I., Amended Response to Certain Requests for Information (which was signed and supplied to the Plaintiff on January 25, 1995) which is

attached hereto as Exhibit "Q" and which states that the Defendant, Aerospatiale, S.N.I., did $3,700,000 worth of business in the State of Mississippi in 1993; that Aerospatiale, S.N.I. had contracts with Vickers in Jackson, Mississippi; that, pursuant to those contracts, Aerospatiale purchased hydraulic pumps from Vickers, Inc. every year from 1970 until the present time; and that Aerospatiale had representatives at the Vickers' plant in Jackson, Mississippi at the very time it submitted the original Response to Certain Requests for Information (Exhibit "H") to the Plaintiff stating that Aerospatiale had never had any representative visit the state of Mississippi; and

(d) A letter from George W. Miller to Wayne Ferrell dated January 13, 1995 verifying that, despite the earlier declarations under penalty of perjury, and despite the earlier representations to the Court, and to the Plaintiff, that Aerospatiale S.N.I. in fact performed substantial business in the State of Mississippi. A copy of this letter is attached hereto as Exhibit "R".

(e) The telephone deposition of Thierry Tuot taken on January 16, 1995, is attached hereto as Exhibit "S". In the deposition, Mr. Tuot explained that he did not discover that Aerospatiale had contracts with Vickers, Inc. (Jackson, Mississippi) until December of 1994 and that he immediately advised Defendants' attorneys. Defendants' attorneys did not notify the Plaintiff about the false information supplied to the Plaintiff

until Mr. Miller wrote Wayne Ferrell on January 13, 1995 (see Exhibit "R") and did not actually supply any of the "new" information until January 23, 1995 (three days after discovery expired) (see Exhibit "Q").

13. In violation of this Court's Order, the Defendants have failed to provide the Plaintiff with information and documents reflecting the amount of business that they have been doing in the state of Mississippi from 1985 to 1992. If the Defendants have done at least $3,700,000.00 in business with Vickers alone each year for 23 years (1970 to 1993) in the state of Mississippi, then Aerospatiale, S.N.I. has done in excess of $85,000,000.00 in the state of Mississippi since 1970. Vickers' customer list, which has a publishing date of May of 1991, is attached hereto as Exhibit "O" and incorporated herein by reference. The Defendant, Aerospatiale, is the first major Aerospace Marine Defense customer on Vickers' list of customers. The third customer on the list is Airbus Industrie, which is a joint venture of Aerospatiale. The fourth customer on the list is Alenia, a major division of the Defendant, Finmeccanica. The next-to-the-last name on the customer list is Snecma, which is a subdivision of Aerospatiale, S.N.I. and is the co-manufacturer of approximately $40,000,000.00 worth of jet engines permanently stationed at the 186th Air Refueling Group, Key Field, Meridian, Mississippi. (See Affidavit of Lt. Col. Wayne E. Ferrell, Jr. which is attached hereto as Exhibit "T" and incorporated herein by reference.) Further, on page 3 of Exhibit "O" (customer list), Vickers advertises that applications from its Tedeco Division "include all military and commercial fixed-wing and rotary (helicopter) aircraft including . . . Aerospatiale aircraft. . . . " The Defendants

have not provided the Plaintiffs with any information on business concerning any Aerospatiale aircraft other than the Airbus.

14. The Defendants have also withheld from the Court and the Plaintiff information and/or documents which establish that numerous representatives (other than those previously acknowledged by the Defendants), have attended the Vickers International Aerospace Conference in Jackson, Mississippi almost every year from 1985. The following Meeting Minutes of Vickers' annual International Aerospace Power & Motion Control Conference establish previously denied visits by the Defendants to the state of Mississippi:

(a) June 7-9, 1993 – Vickers 35th International Conference Meeting Minutes (Exhibit "U") establish that on June 7, 1993, Claude Saint Amans, Jean Pierre Athier, Michel Berry and Francis Casares represented Aerospatiale at the Aerospace Conference in Jackson, Mississippi and that Eloi Henry represented Airbus Industrie.

(b) November 4-6, 1991 (Vickers 34th International Conference Meeting Minutes (Exhibit "P") establish that Michel Berry and Francois Cros attended the International Aerospace Conference in Jackson, Mississippi. Jean-Bernard Galy attended on behalf of Airbus Industrie and, as previously pointed out, Attilio Matteini represented Alenia at that conference.

(c) November 6-8, 1989 (Vickers 33rd International Conference Meeting Minutes (Exhibit "V") establish that Yann Nicholas represented Aerospatiale, and Georges Bardou

and Keith Hughes represented Airbus Industrie at the 1989 Aerospace Conference in Jackson, Mississippi.

(d) April 11-13, 1988 (Vickers 32nd International Conference Meeting Minutes (Exhibit "W") establish that Louis Signorelli of Aerospatiale and Eloi Henry of Airbus Industrie attended the Aerospace Conference.

(e) November 16-19, 1986 (Vickers 31st International Conference Meeting Minutes (Exhibit "X") establish that Daniel Albert and Georges Bardou attended the Aerospace Conference on behalf of Airbus Industrie.

(f) May 5-8, 1985 (Vickers 30th Aerospace Fluid Power Conference Meeting Minutes (Exhibit "Y") establish that Jean-Pierre Dambrine attended the Aerospace Conference on behalf of Airbus Industrie for that year's annual conference.

Plaintiff also incorporates herein by reference the Affidavit of Michael J. McDonald, who is the Market Operation Manager of Vickers, Inc. and whose office is located at 5353 Highland Drive, Jackson, Mississippi, which will be filed separately after the entry of protective order.

The Defendants have steadfastly refused to provide information which the Plaintiff has shown exists and which the Defendants now admit exists even though warned and ordered by the Court not to withhold any information. A copy of the Court's Order on Defendants' Emergency Motion to Enforce Order Governing Discovery on Personal Jurisdiction and to Quash Plaintiff's Subpoenas Served Upon Thirteen Non-Parties dated January

24, 1995 is attached hereto as Exhibit "Z" and incorporated herein by reference.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff moves the Court for an Order striking the Defendants' responsive pleadings and an Order entering judgment by default against all Defendants, and for an Order setting a hearing date on the issue of Plaintiff's damages. Alternatively, Plaintiff moves the Court for an Order imposing sanctions against the Defendants including, but not Limited to, the following:

(a) An Order imposing sanctions against the Defendants in the form of an Order denying Defendants' Motion to Dismiss for Lack of *In Personam* Jurisdiction.

(b) An Order requiring the Defendants to fully and completely respond to the Particularized Statements of Subject Matter of Discovery without withholding any information whatsoever and producing all of the documents requested of the Defendants in the five (5) telephonic depositions and which were submitted to the Defendants by a request for production of documents.

(c) An Order requiring the Defendants to tender for depositions all of their representatives who have been to Mississippi or have had any contact with any corporation, entity, partnership or person in the state of Mississippi, at their respective offices in Italy and France and requiring the Defendants to pay the attorneys' fees of Plaintiff's attorneys for the time spent taking those depositions, as well as the cost of their travel, food and lodging, incurred in attending and taking those depositions, and the cost for court reporters and interpreters.

(d) An Order imposing any other appropriate sanctions and costs as permitted by the Federal Rules of Civil Procedure and the Mississippi Litigation Accountability Act.

WHEREFORE, PREMISES FURTHER CONSIDERED, the Plaintiff further moves the Court for entry of an Order imposing monetary sanctions against the Defendants for the willful and/or reckless violation of Rules 11 and 37 of the Federal Rules of Civil Procedure for submitting false answers, (given either intentionally or without reasonably diligent inquiry and effort to ascertain the true facts) in the Declarations Under Penalty of Perjury, and in the response to Plaintiff's Particularized Statement of Subject Matter of Discovery.

Plaintiff moves further in the alternative for an Order extending the discovery time as to the issue of jurisdiction and extending the due dates for the Plaintiff to respond to Defendants' Motions to Dismiss until the Defendants provide the Plaintiff with complete truthful responses, with relevant documents, and with all other information relevant to the issue of jurisdiction.

Plaintiff respectfully requests oral argument of this Motion.

Respectfully submitted, this the 2nd day of February, 1995.

TONY JOBE, Assignee of
AIR NEW ORLEANS, INC.

BY: /s/ Wayne E. Ferrell, Jr.
WAYNE E. FERRELL, JR.

OF COUNSEL:

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Post Office Box 310
Hattiesburg, MS 39403-0310
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NOTICE OF MOTION

TO: Erik M. Lowrey, Esq.
Erik M. Lowrey, P.A.
214 West Pine Street
Hattiesburg, MS 39403-0485

George W. Miller, Esq.
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

PLEASE TAKE NOTICE that Plaintiff will bring on to be heard his Motion to Strike Responsive Pleading filed

by the Defendants; Motion for Entry of Default Judgement or, in the Alternative, Motion for Sanctions Including, But Not Limited to, Denial of Defendants' Motion to Dismiss for Filing False Declarations Under Penalty of Perjury and for Defendants' Failure to Provide Information as Ordered by The Court before The Honorable Charles Pickering in the United States District Court for the Southern Division in Hattiesburg, Mississippi as soon as counsel may be heard.

THIS the 2nd day of February, 1995.

TONY B. JOBE, Assignee of
Air New Orleans, Inc.

BY: /s/ Wayne E. Ferrell, Jr.
WAYNE E. FERRELL, JR.

CERTIFICATE OF SERVICE

I, Wayne E. Ferrell, Jr., attorney for the Plaintiff, do hereby certify that I have this day delivered by United States mail, postage prepaid, a true and correct copy of the above and foregoing Motion to:

Erik M. Lowrey, Esq.
Erik M. Lowrey, P.A.
214 West Pine Street
Hattiesburg, MS 39403-0485

George W. Miller, Esq.
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

THIS the 2nd day of February, 1995.

/s/ Wayne E. Ferrell, Jr.
WAYNE E. FERRELL, JR.

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY B. JOBE, Assignee of
AIR NEW ORLEANS, INC.,

Plaintiff,

v. No. 2:94-CV-18PS

ATR MARKETING, INC., AEROSPATIALE,
AERITALIA, and AVIONS de TRANSPORT
REGIONALE (G.I.E.),

Defendants.

DECLARATION OF THIERRY TUOT

I, Thierry Tuot, hereby declare and state the following:

1. I am the General Counsel for Aerospatiale, S.N.I. ("Aerospatiale").

2. Aerospatiale is a French corporation, a majority of whose stock is controlled by the French State. Aerospatiale is the sole shareholder of Aerospatiale, Inc., a United States corporation incorporated in New York with its principal place of business in Washington, D.C. Aerospatiale is an equal participant with Finmeccanica S.p.A. ("Finmeccanica") in an entity called Avions de Transport Regionale, G.I.E. ("ATR"). ATR is a Groupement d'Interet Economique organized under the laws of France.

3. In May 1994, I received in the mail a copy of a summons and the complaint in the above-captioned case.

I have no personal knowledge of, nor has my investigation discovered, any other attempts at service of process on Aerospatiale through contact with any person at Aerospatiale.

4. Aerospatiale has not authorized any person or entity in the United States to accept service of process on its behalf. Specifically, ATR Marketing, Inc., Aerospatiale, Inc., Alain Brodin, and Gregory Bradford are not authorized to accept service of process for Aerospatiale.

5. I have no personal knowledge of any employees of Aerospatiale visiting the State of Mississippi on behalf of Aerospatiale or of any contacts initiated with the State of Mississippi by Aerospatiale employees on behalf of Aerospatiale at any time in the past. Further, after conducting an investigation, I have discovered no evidence of any visits to or contacts with the State of Mississippi by Aerospatiale personnel on behalf of the company at any time.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Thierry Tuot
Thierry Tuot

Dated: 27 June 1994

[p. 1] **EXHIBIT "S"**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY B. JOBE, ASSIGNEE OF
AIR NEW ORLEANS, INC., PLAINTIFF,

VS. NO. 2:94-CV-18PS

ATR MARKETING, INC., AEROSPATIALE,
AERITALIA, AND AVIONS DE TRANSPORT
REGIONAL (G.I.E.), DEFENDANTS.

****

TELEPHONIC DEPOSITION OF THIERRY TUOT

Taken in the offices of Ferrell & Hubbard, 405 Tombigbee Street, Jackson, Mississippi, beginning at 9:05 a.m. on Monday, January 16, 1995.

****

APPEARANCES:

WAYNE E. FERRELL, JR., ESQUIRE
Ferrell & Hubbard
405 Tombigbee Street
Jackson, Mississippi 39225-4448
ATTORNEY FOR PLAINTIFF

GEORGE W. MILLER, ESQUIRE (By telephone)
Hogan & Hartson, L.L.P.
Columbia Square
555 Thirteenth Street N.W.
Washington, D.C. 20004-1109
ATTORNEY FOR DEFENDANTS

ALSO PRESENT:

COLETTE OBERLIN, Interpreter
(By telephone)

REPORTED BY:

DEBORAH A. JAMES (LAND), CSR 1222
Shorthand Reporter/Notary Public

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(Original Exhibit 6 retained by Mr. Ferrell.)

[p. 3] STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that this deposition may be taken at the time and place hereinbefore set forth, by DEBORAH A. JAMES (LANG), Court Reporter and Notary Public, pursuant to the Rules;

That the formality of reading and signing is specifically NOT WAIVED;

That all objections, except as to the form of the questions and the responsiveness of the answers, are reserved until such time as the deposition, or any part thereof, may be used or sought to be used in evidence.

* * *

[p. 4] (THE FOLLOWING TESTIMONY WAS GIVEN BY THE WITNESS THROUGH AN INTERPRETER.)

BY MR. FERRELL: George, there's no need to swear in the interpreter, is there?

BY MR. MILLER: Not as far as I'm concerned. I'm prepared to stipulate that we can treat the interpreter as having been sworn.

BY MR. FERRELL: Okay. All right. Well, she's ready for the oath then.

THIERRY TUOT,

after first having been duly sworn, was examined and testified under oath, as follows, to-wit;

BY MR. FERRELL: All right. George, we would like the same introductory statement that we've made in the other depositions, and we would like Mr. Tuot to read and sign.

A. What document are we talking about?

BY MR. FERRELL: The deposition that he's about to give.

A. He's perfectly ready to read it and to sign it.

[p. 5] EXAMINATION BY MR. FERRELL:

Q. State your name, please.

A. Tuot.

Q. And what is your business address?

A. His business address is 37 – 37 boulevarde de Montmorency. Let me spell it for you. Montmorency, M-o-n-t-m-o-r-e-n-c-y. The zip code is 75116 Paris, P-a-r-i-s, France.

Q. Mr. Tuot, what is you title at Aerospatiale?

A. General counsel.

Q. All right. I have a letter from Mr. Miller outlining Mr. Tuot's work experience and education.

A. Is good.

BY MR. FERRELL: Does he have that in front of him, George?

BY THE INTERPRETER: You are talking to Mr. Miller now?

BY MR. FERRELL: Yes. George, does he have a copy of the letter you wrote me?

BY MR. MILLER: I believe he does.

BY MR. FERRELL: Okay.

[p. 6] BY MR. MILLER: Why don't you just ask the witness.

Q. (Mr. Ferrell continuing.) Mr. Tuot, do you have a copy of Mr. Miller's letter to me in front of you?

A. In front of him is a copy of the letter containing bibliographical information about himself and he signed above his letter.

BY MR. FERRELL: All right. Can you repeat that, please?

BY THE INTERPRETER: He says that he has in front of him a letter containing bibliographical information about himself.

BY MR. FERRELL: Biographical?

BY THE INTERPRETER:

Bibliographical information.

Q. (Mr. Ferrell continuing.) Okay. And is that biographical information true and correct?

A. Yes, they are.

BY MR. FERRELL: All right. We'll make that Exhibit 1 to the deposition.

(DOCUMENT MARKED AS DEPOSITION EXHIBIT NUMBER ONE AND ATTACHED.)

[p. 7] Q. (Mr. Ferrell continuing.) Mr. Tuot, I have a Declaration dated June 27th, 1994, with your signature on that document. Are you aware of that document and do you have that in front of you?

A. Yes. He has the document in front of him.

Q. Is it true, Mr. Tuot, that prior to January of 1991 you have no knowledge about any of the affairs – personal knowledge about any of the affairs or business of Aerospatiale, S.N.I.?

A. Yes, it's correct.

Q. Who is the person with Aerospatiale, S.N.I., who has the most knowledge about business conducted by Aerospatiale in the United States that was there from '85 to 1991?

A. I wasn't working for Aerospatiale at that time, and therefore I have to do some inquiry to have some more information about that.

Q. Mr. Tuot, you said in your Declaration, dated June 27th, 1994, that you made an investigation into the business of Aerospatiale and found no evidence of any visits or contacts with the state of Mississippi by Aerospatiale personnel on behalf of the company. My question

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

TONY B. JOBE, Assignee of
AIR NEW ORLEANS, INC.,

Plaintiff,

v. No. 2:94-CV-18PS

ATR MARKETING, INC., AEROSPATIALE,
AERITALIA, and AVIONS de TRANSPORT
REGIONAL (G.I.E.),

Defendants.

DEFENDANT AEROSPATIALE, S.N.I.'S RESPONSE TO CERTAIN REQUESTS FOR INFORMATION DESCRIBED IN PLAINTIFF'S "PARTICULARIZED STATEMENT OF SUBJECT MATTER OF DISCOVERY"

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and the parties' agreement on the scope of jurisdictional discovery, defendant Aerospatiale, S.N.I. ("Aerospatiale") hereby responds to the requests for information contained in paragraphs 8-10, 12, 14-16, and 22-27 of plaintiff's "Particularized Statement of Subject Matter of Discovery."

Pursuant to the parties' agreement that, despite language to the contrary in plaintiff's interrogatories, defendants are required to respond only with respect to the period of time from 1985 to the present and only for contacts with the State of Mississippi, Aerospatiale responds to plaintiff's interrogatories as follows:

8. Names, current addresses, current telephone numbers, present occupations and current names and

addresses of present employers of employees, representatives, agents, officers and/or directors of Aerospatiale, Aerospatiale, Inc., ATR, Finmeccanica and/or AMI who were involved with or would have knowledge of business conducted by the Defendants in the State of Mississippi for the period of time that is the subject of the lawsuit in question.

Response: During the period 1985 to the present, Aerospatiale did not conduct any business in the State of Mississippi. Accordingly, it does not have any employees, representatives, agents, officers and/or directors who have knowledge thereof.

9. The corporate history of each Defendant including, but not limited to, the names, addresses and businesses of each parent, subsidiary and/or affiliated corporation.

Response: Aerospatiale objects to this interrogatory as overbroad and unduly burdensome. Specifically, Aerospatiale objects to the request for corporate histories of each parent, subsidiary and/or affiliate of Aerospatiale. Without waiving the foregoing objection, Aerospatiale responds as follows regarding its own corporate history:

Aerospatiale is a French société anonyme (public limited liability company) incorporated under French Law on November 16, 1936, with a life of 99 years, and is registered in the Paris Register of Commerce and Companies. Aerospatiale as it exists today was created by the French Government in 1970 through the merger of the State-owned Sud-Aviation, Nord-Aviation and Sereb companies.

10. Information on whether the Defendants have maintained, retained and/or obtained any interest in aircraft, aircraft parts or any other products manufactured, used and/or sold by any of the Defendants within the State of Mississippi and/or to have been used in whole or part within the State of Mississippi for a period of time beginning ten years prior to the period of time that is the subject of the lawsuit in question. As to each aircraft, the aircraft part or other product manufactured, leased, used and/or sold by any of the Defendants, a description in detail of the value; the extent of the Defendant's interest therein (including chattel mortgages or any other type of financing interest); the inclusive dates of which Defendants owned, maintained, obtained or retained an interest in any aircraft, aircraft part and/or other product; whether the property is or was used in connection with your business and, if so, how.

* * *

15. Information about whether any of the Defendants have appointed a distributor to distribute aircraft, aircraft parts or other products within the State of Mississippi and/or distributors have been appointed to distribute products in the State of Mississippi. As to the information on the person, firm or corporation appointed, please give the names, addresses and telephone numbers and the areas in which they (distributors) are authorized to sell or distribute Defendants' products; the volume of business they have done in or on your behalf for each year; the type and number or other identifying features; and the presence [sic] whereabouts of each contract or writing evidencing your appointment; and the name and address of the person who negotiated the appointment with you.

Response: During the period 1985 to the present, Aerospatiale has not appointed a distributor to distribute

aircraft, aircraft parts or other products within the State of Mississippi.

16. Information about products manufactured by the Defendants; sold by the Defendants; used by the Defendants; leased by the Defendants; purchased by the Defendants and/or shipped by the Defendants to and from any resident of the State of Mississippi; to any person, resident or entity outside the State of Mississippi for use in the State of Mississippi for a period of time beginning 1970 to early in 1994. As to each product delivered, purchased, sold, leased, and/or used, the names and addresses of the persons, firms or corporations who received the product; bought the products; delivered the products; purchased the products; came in contact with the products in any way; a description of the products and merchandise; the place where the products or merchandise were delivered; the place where the products or merchandise were used; the place where the products or merchandise were sold; the place where the products or merchandise were manufactured; whether there was any written evidence of the shipment or delivery of the products or merchandise; and the name and address of the present custodian of each such writing.

Response: To the extent this interrogatory requests information regarding sales to a person or entity outside the State of Mississippi for use in the State of Mississippi, this interrogatory seeks information that is legally insufficient to establish personal jurisdiction over Aerospatiale in Mississippi. See, e.g., Thompson v. Chrysler Motors Corp., 755 F.2d 1162 (5th Cir. 1985). Without waiving the foregoing objection, Aerospatiale responds as follows:

During the period 1985 to the present, Aerospatiale has not delivered, sold, or leased any products to any resident of the State of Mississippi, nor has Aerospatiale

purchased or leased any product from any resident of the State of Mississippi.

22. Names of residents, corporations, businesses or entities in the United States, and specifically Mississippi, who have purchased ATR-42s, Super ATRs, and/or any other aircraft manufactured, leased or sold by any of the Defendants or sold by subsidiaries or parent corporations of any of the Defendants and/or sold by organizations who are involved in joint ventures with any of the Defendants.

Response: During the period 1985 to the present, Aerospatiale has not sold to any residents, corporations, businesses or entities in Mississippi any ATR-42s, Super ATRs, and/or any other aircraft manufactured, leased or sold by any of the defendants or sold by subsidiaries or parent corporations of any of the defendants and/or sold by organizations who are involved in joint ventures with any of the defendants.

23. The current names and addresses of all Defendants' sales representatives for the southeast United States from 1970 to 1994.

Response: During the period 1985 to the present, Aerospatiale has not had any sales representatives for the Southeast United States.

24. Sales of aircraft, aircraft parts, helicopter and/or helicopter parts that were sold to or shipped to military bases in Mississippi, i.e., the Air Force, Navy, Army, Coast Guard, reserve forces and/or National Guard units from 1970 to 1994.

Response: During the period 1985 to the present, Aerospatiale has not sold or shipped to military bases in

Mississippi any aircraft, aircraft parts, helicopter and/or helicopter parts.

25. Information on sales and/or shipments of aircraft, aircraft parts, helicopter, and/or helicopter parts to any civil or state agency in the State of Mississippi such as the Highway Patrol, Civil Air Patrol, or Civil Service from 1970 to 1994.

Response: During the period 1985 to the present, Aerospatiale has not sold or shipped to any civil or state agency in the State of Mississippi any aircraft, aircraft parts, helicopter and/or helicopter parts.

26. Information on sales and/or shipments of aircraft, aircraft parts, helicopter and/or helicopter parts to any state or local government within the State of Mississippi, i.e., sheriff's department and/or police department from 1970 to 1994.

Response: During the period 1985 to the present, Aerospatiale has not sold or shipped to any state or local government within the State of Mississippi any aircraft, aircraft parts, helicopter and/or helicopter parts.

27. Information on sales and/or shipments of aircraft, aircraft parts, helicopter and/or helicopter parts to any air ambulance services, corporations or subsidiaries of city, county and/or state government in Mississippi from 1970 to 1994.

Response: During the period 1985 to the present, Aerospatiale has not sold or shipped to any air ambulance services, corporations or subsidiaries of city, county

and/or state government in Mississippi any aircraft, aircraft parts, helicopter and/or helicopter parts.

As to objections,

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Dated: November ____, 1994

VERIFICATION

I, Thierry Tuot, declare under penalty of perjury under the laws of the United States of America (1) that I am an officer of defendant Aerospatiale, S.N.I., (2) that I am authorized by that entity to execute this verification on its behalf, and (3) that I have read the foregoing Response to Certain Requests for Information Described in Plaintiff's "Particularized Statement of Subject Matter of Discovery" and do hereby verify on behalf of Aerospatiale, S.N.I. that the facts stated therein are true and correct to the best of my knowledge.

Thierry Tuot
Vice President and General Counsel
Aerospatiale, S.N.I.

Executed on November ____, 1994.